THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1996 CUMULATIVE SUPPLEMENT

Volume 19

Chapters 137 through 143B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

D. S. Tussey, K. S. Mawyer, R. B. Layne,
K. J. Kennedy and F. J. Payne

Annotated through 470 S.E.2d 425. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

MICHIE
Law Publishers
Charlottesville, Virginia
1996

Copyright © 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990,
1991, 1992, 1993, 1994, 1995, 1996
by
Michie,
a division of Reed Elsevier Inc.
and Reed Elsevier Properties Inc.

All rights reserved.

5207614

"Michie" and the Open Book and Gavel logo are trademarks of
Michie, a division of Reed Elsevier Inc.

Preface

This Cumulative Supplement to Volume 19 contains the general laws of a permanent nature enacted by the General Assembly through the 1996 Second Extra Session, which are within the scope of such volume, and brings up to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1996 Second Extra Session affecting Chapters 137 through 143B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 343, p. 303.
North Carolina Court of Appeals Reports through Volume 121, p. 513.
South Eastern Reporter 2nd Series through Volume 470, p. 425.
Federal Reporter 3rd Series through Volume 83, p. 1423.
Federal Supplement through Volume 924, p. 224.
Federal Rules Decisions through Volume 165, p. 700.
Bankruptcy Reports through Volume 195, p. 823.
Supreme Court Reporter through Volume 116, p. 1711.
North Carolina Law Review through Volume 74, p. 1319.
Wake Forest Law Review through Volume 30, p. 1008.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

Digitized by the Internet Archive
in 2026 with funding from
State Library of North Carolina

https://archive.org/details/generalstatuteso19nort_5

The General Statutes of North Carolina
1996 Cumulative Supplement

VOLUME 19

Chapter 137.

Rural Rehabilitation.

Article 2.

North Carolina Rural Rehabilitation Corporation.

Sec.
137-31.5. Audit.
137-35. Loans to be made through State Board of Education.

Article 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31.5. Audit.

The operations of the Corporation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1953, c. 724, s. 5; 1983, c. 913, s. 26.)

§ 137-35. Loans to be made through State Board of Education.

The said loans shall be made through and with the assistance of the State Board of Education in the following manner:

(1) As applications for loans are made, the Director of Auxiliary Services and the Director of Vocational and Technical Education, State Department of Public Instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(2) The Local Government Commission will then determine whether the county or school district can, under the Constitution, borrow funds necessary for the construction or equipment of such buildings.

(3) The State Board of Education will then pass upon, and approve or disapprove, the project from the standpoint of the State educational system.

(4) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina Rural Rehabilitation Corporation for final approval.

(5) Upon such final approval the North Carolina Rural Rehabilitation Corporation will deliver to the State Board of Education the funds which are to be advanced.

(6) Said funds will be loaned by the State Board of Education according to the same rules and regulations and legal requirements as those under which the State Literary Fund is now administered.

(7) Said loans will be repayable in ten equal annual installments and will bear interest at four percent (4%) per annum, payable annually, semiannually, or quarterly, as the State Board of Education shall determine.

(8) All loans made by the State Board of Education from such funds so advanced by the Rural Rehabilitation Corporation shall be evidenced by notes payable to the order of the Rural Rehabilitation Corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the State Board of Education, to the Rural Rehabilitation Corporation and a proper receipt taken therefor. (1939, c. 241, s. 2; 1993, c. 180, s. 7.)

Chapter 138.

Salaries, Fees and Allowances.

§ 138-5. Per diem and allowances of State boards, etc.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 23.32, provides: "Notwithstanding G.S. 138-5(a)(1), those members of the North Carolina Vocational Rehabilitation Advisory Council, the Statewide Independent Living Council, and the Commission for the Blind, who are unemployed or who must forfeit wages from other employment to attend council or commission meetings or to perform related duties, may receive compensation not to exceed fifty dollars ($50.00) a day for attending these meetings or for performing related duties, as authorized in Sections 105 and 705 of P.L. 102-569, the Rehabilitation Act of 1973, 42 U.S.C. § 701 et seq., as amended. This compensation is instead of the compensation specified in G.S. 138-5(a)(1). Reimbursement for subsistence and travel expenses is as specified in G.S. 138-5."

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

Sec.
139-3. Definitions.
139-4. Powers and duties of Soil and Water Conservation Commission generally.
139-8. Powers of districts and supervisors.

ARTICLE 1.

General Provisions.

§ 139-3. Definitions.

Wherever used or referred to in this Chapter, unless a different meaning clearly appears from the context:

(1) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the State.

(2) "A qualified voter" includes any person qualified to vote in elections by the people under the Constitution of this State.

(3) "Environmental Management Commission" or "State Environmental Management Commission" means the Environmental Management Commission of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Environmental Management Commission.

(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. 143B-294.

(5) "District" or "soil and water conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this Chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(6) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than 10 days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(7) "Government" or "governmental" includes the government of this State, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(8) The terms "land occupier" or "occupier of land," and "landowner" or "owner of land" include any person, firm or

corporation who shall hold title to or shall have contracted to purchase any lands lying within a soil and water conservation district organized under the provisions of this Chapter.

(9) "Nominating petition" means a petition filed under the provisions of G.S. 139-6 to nominate candidates for the office of supervisor of a soil and water conservation district.

(10) Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

(11) "Petition" means a petition filed under the provisions of Article 1 of this Chapter for the creation of a soil and water conservation district.

(12) "State" means the State of North Carolina.

(13) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this Chapter.

(14) Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

(15) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(16) Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

(17) A "watershed improvement project" means a project of watershed improvement (whether involving flood prevention, drainage improvement, water supply, soil and water conservation, recreation facilities, fish and wildlife habitat, or other related purposes, singly or in combination) which is undertaken:

a. Repealed by Session Laws 1993, c. 391, s. 1, effective July 1, 1993.

b. By a soil and water conservation district under the provisions of Article 1 of Chapter 139 of the General Statutes or any local act granting similar powers.

c. By a drainage district under the provisions of Chapter 156 of the General Statutes or any local act granting similar powers.

d. By a county that is carrying out a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes or any local act granting similar powers.

e. By any combination of the foregoing, acting as joint sponsors of a watershed improvement program.

f. By any watershed, drainage or flood control project planned or carried out by the Soil Conservation Service, Tennessee Valley Authority or the Army Corps of Engineers.

(18) A "watershed improvement work" means a single feature or facility or portion of a watershed improvement project, such as a water retarding or impoundment structure for one or more authorized watershed purposes or a section of improved stream channel or the land treatment measures associated with a water retarding structure. (1937, c. 393, s. 3; 1947, c. 131, s. 2; 1959, c. 781, s. 4; 1965, c. 582, s. 1;

1967, c. 987, s. 1; 1971, c. 1138, s. 1A; 1973, c. 1262, s. 38; 1993, c. 391, s. 1; 1995, c. 519, s. 5.)

Effect of Amendments. – The 1995 amendment, effective July 29, 1995, substituted "Soil and Water Conservation Commission created by G.S. 143B-294" for "agency created in G.S. 139-4" in subdivision (4).

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally.

(a) through (c) Repealed by Session Laws 1973, c. 1262, s. 38.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.

(7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications.

(8) To supervise and review small watershed work plans pursuant to G.S. 139-41.2 and 139-47.

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control pursuant to G.S. 143-215.74.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control as provided by G.S. 139-8(13).

(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the Secretary of Environment, Health, and Natural Resources. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38; 1981, c. 326, s. 1; 1995, c. 519, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, added subdivisions (d)(9) and (d)(10), and subsection (e).

§ 139-8. Powers of districts and supervisors.

(a) A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter:

(1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.

(2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (a), subdivision (3) of G.S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.

(3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Chapter.

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and

provisions of this Chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this Chapter.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.

(6) To construct, improve, operate, and maintain such structures, works and projects as may be necessary or convenient for the performance of any of the operations authorized in this Chapter, including watershed improvement structures, works, and projects as well as any other structures, works, and projects which the district is authorized to undertake.

(7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Environment, Health, and Natural Resources in cooperation with the United States Department of Agriculture.

(9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Chapter, to carry into effect its purposes and powers.

(10) As a condition to the extending of any benefits under this Chapter to, or the performance of work upon, any lands not

owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.

(11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(12) Nothing contained in this Chapter shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of Environment, Health, and Natural Resources by providing technical assistance, allocating available grant monies, and providing any other assistance that may by required or authorized by any provision of federal or State law.

(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission. (1937, c. 398, s. 8; 1939, c. 341; 1959, c. 781, s. 7; 1969, c. 711, s. 1; 1973, c. 1262, s. 38; 1977, c. 771, s. 4; 1989, c. 727, s. 218(93); 1995, c. 519, ss. 2, 3.)

Effect of Amendments. — Session Laws 1995, c. 519, ss. 2 and 3, effective July 29, 1995, added the subsection (a) designation, and added subdivision (a)(13) and subsection (b).

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1B.

North Carolina Museum of Art.

Sec.
140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

ARTICLE 1B.

North Carolina Museum of Art.

§ 140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

(a) It is the duty of the Department of Cultural Resources to develop policy and to establish and enforce standards for resources, services, and programs involving the arts and the cultural aspects of the lives of the citizens of North Carolina. To attain these objectives, there is hereby established within the Department of Cultural Resources the Board of Trustees of the North Carolina Museum of Art.

(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 28 members, chosen as follows:

(1) The Governor shall appoint twelve members, one from each congressional district in the State in accordance with G.S. 147-12(3b);
(2) The North Carolina Art Society, Incorporated, shall elect four members;
(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
(5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years.

(c) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. All other vacancies occurring in the regular membership of the Board of Trustees prior to the expiration of a term shall be filled by the same authority and in the same manner as the vacating member was chosen, and the successor member so chosen shall serve for the remainder of the unexpired term of the vacating member.

(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative appointees shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

(1) Four members at large shall be appointed by the Governor for initial terms of three years and four members at large shall be appointed by the Governor for initial terms of six years.

(2) One member shall be elected by the North Carolina Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.

(3) One member shall be elected by the North Carolina Museum of Art Foundation, Incorporated, for an initial term of three years and two members shall be elected by that Foundation for initial terms of six years.

(4) One member shall be elected by the Art Commission prior to July 1, 1980, for an initial term of three years and two members shall be elected by that Commission for initial terms of six years. Upon the expiration of the terms of those three members, their successors shall be elected by the Board of Trustees of the North Carolina Museum of Art.

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

(6) The initial appointments by the General Assembly shall serve until June 30, 1983. Subsequent appointments shall be for two-year terms commencing July 1, 1983, and biennially thereafter.

(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 51.

Every vacancy occurring in the initial membership of the Board of Trustees prior to the expiration of a term of office shall be filled by the same authority and in the same manner as the vacating member was chosen and the successor member so appointed shall serve for the remainder of the unexpired term of the vacating member.

(e) Any member of the Board of Trustees may be removed from office by the authority that appointed or elected that member for misfeasance, malfeasance, or nonfeasance in office. In the case of an appointment made by the Governor, removal shall be made in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) A public officer who is appointed or elected to serve on the Board of Trustees shall be deemed to serve thereon as a trustee ex officio and his duties as a trustee shall be deemed additional duties of his primary public office.

(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other officers as the Board deems necessary. The chairman shall be designated by the Governor from among the members of the Board. The vice-chairman shall be elected by and from among the members of the Board. The chairman and vice-chairman shall be chosen for terms of two years or for so long as they are members of the Board, whichever is the shorter period. The Director of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall attend all meetings, except when the Board is considering issues related to the Director's performance of duties.

(h) The Board of Trustees shall meet at least once in each quarter. The Board may hold special meetings at any time and place within the State at the call of the chairman. The chairman may call a special meeting at his discretion, and he shall call a special meeting upon the written request of a majority of the authorized membership of the Board of Trustees.

(i) A majority of the authorized membership of the Board of Trustees shall constitute a quorum for the transaction of business.

(j) Members of the Board of Trustees who are officers or employees of State agencies or institutions shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 138-6. All other members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources per diem and travel and subsistence allowances at the rates authorized by G.S. 138-5.

(k) All clerical and administrative services required by the Board of Trustees shall be supplied by the office of the Director of the North Carolina Museum of Art. (1979, 2nd Sess., c. 1306, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 49-52; 1987, c. 842, ss. 1, 2; 1991, c. 756, s. 35; 1995, c. 490, s. 8.)

Editor's Note. —

Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(5). For the applicability of this amendment, see editor's note.

Chapter 140A.

State Awards System.

Sec.
140A-3. Annual awards to natives living outside State.

§ 140A-3. Annual awards to natives living outside State.

Awards may be made annually to native-born North Carolinians, living outside of North Carolina, for preeminent accomplishment in not more than two of the above fields of creative endeavor. (1961, c. 1143, s. 3; 1991, c. 131, s. 1.)

Chapter 142.

State Debt.

Article 1.

General Provisions.

Sec.
142-12. State bonds exempt from taxation.
142-12.1. Effect of federal taxation of interest income on state or local bonds on issuance thereof; continuation of state tax exemptions.

Article 3A.

Refunding Bonds.

Sec.
142-29.5. Authorization of refunding obligations.
142-29.6. Sale of refunding obligations and provisions thereof.

ARTICLE 1.

General Provisions.

§ 142-12. State bonds exempt from taxation.

Bonds and other evidences of indebtedness issued by the State are exempt from State taxation to the extent provided in the act authorizing their issuance. If the act authorizing the issuance of the instruments does not address exemption from taxation, then they are exempt from taxation by the State or any of its subdivisions, except for inheritance or gift taxes, income taxes on the gain from the transfer of the instruments, and franchise taxes. Unless the act authorizing the issuance of the instruments provides otherwise, the interest on the instruments is not subject to taxation as income. (1852, c. 10, s. 4; R.C., c. 90, s. 5; Code, s. 3565; Rev., s. 5022; C.S., s. 7410; 1995, c. 46, s. 14.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, rewrote this section.

§ 142-12.1. Effect of federal taxation of interest income on state or local bonds on issuance thereof; continuation of state tax exemptions.

(a) It is hereby found, determined and declared that:

(1) From time to time bills have been introduced in the United States Congress providing that the interest on all or certain state and municipal bonds or debt obligations, whether issued by or on behalf of states or local governmental units, be subject to federal income taxation; and

(2) The Tax Reform Act of 1986 requires, in certain circumstances, the inclusion in the gross income of the recipient thereof of interest on bonds or obligations issued by or on behalf of certain state or local governmental units for purposes of federal income tax which heretofore would have been exempt from federal income taxation.

(b) Nothing in any act, general, special or private, shall be deemed to limit or restrict the right of the State or any agency or instrumentality thereof, or The University of North Carolina or any agency or instrumentality thereof, or any county, city, town, special district, authority or other political subdivision or local governmental unit or any agency or instrumentality thereof, to issue, or have issued on its behalf, bonds or obligations the interest income on which is or may be subject to federal income taxation.

(c) The interest on any of these bonds or obligations shall maintain its existing exemption from State income taxation, or other taxation, if any, notwithstanding that the interest may be or become subject to federal income taxation as a result of legislative action by the federal government.

(d) If the provisions of this section are inconsistent with the provisions of any other laws, the provisions of this section shall be controlling. (1987, c. 587, ss. 1-4; 1995, c. 41, s. 10.)

Editor's Note. — Session Laws 1995, c. 41, s. 11, provides in part: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1995 amendment, effective for taxable years beginning on or after January 1, 1995, in subsection (c) substituted "of these" for the first occurance of "such", deleted "including but not limited to, the tax on intangible personal property now imposed by the State" following "if any", and substituted "the" for the second occurance of "such."

ARTICLE 3A.

Refunding Bonds.

§ 142-29.5. Authorization of refunding obligations.

By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell, from time to time, refunding obligations for the purpose of refunding outstanding obligations as and to the extent authorized by this Article. The principal amount of any such refunding obligations shall not exceed the principal amount of outstanding obligations to be refunded unless (i) the refunding results in an aggregate debt service savings and (ii) the increase in the principal amount issued does not create cash-in-hand available for new capital improvements.

Refunding obligations issued pursuant to the provisions of this Article shall not be subject to limitations imposed by any other law including, without limitation, the other Articles of this Chapter. (1935, c. 445, s. 5; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1993, c. 542, s. 13.)

Editor's Note. — Session Laws 1993, c. 542, which amended this section, in s. 15 sets forth various provisions for the interpretation of the act, including, among others, liberal construction. Subsection (e) of s. 15 is a severability clause.

§ 142-29.6. Sale of refunding obligations and provisions thereof.

(a) The bonds shall bear such date or dates, shall be serial or term bonds, shall mature in such amounts and at such times, not exceeding 40 years from their date or dates, and shall bear interest at such rate or rates, which may vary from time to time as hereinafter authorized, and which may be represented, in part, by evidences of additional interest, and the bonds may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices and under such terms and conditions, all as may be fixed by the State Treasurer with the consent of the Council of State.

(b) The bonds shall be signed on behalf of the State by the Governor or shall bear his facsimile signature; shall be signed by the State Treasurer or shall bear his facsimile signature; and shall bear the Great Seal of the State or a facsimile thereof impressed or imprinted thereon; and interest coupons, if any, shall bear a facsimile of the signature of the State Treasurer. If the bonds shall bear the facsimile signatures of the Governor and the State Treasurer, the bonds shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on any bonds or coupons (if any) cease to be such officer before the delivery of the bonds, such signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and any bond or coupon may bear the facsimile signatures of such persons who at the actual time of the execution of such bond or coupon shall be the proper officers to sign any bond or coupon although at the date of such bond or coupon such persons may not have been such officers. The form and denomination of the bonds and any coupons, including the provisions with respect to registration of the bonds, shall be as the State Treasurer may determine in conformity with this Article; provided, however, that nothing in this Article shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds, under the provisions of the Registered Public Obligations Act as well as this Article.

(c) Subject to determination by the Council of State as to the manner in which the bonds shall be offered for sale, whether at public or private sale and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell the bonds, at one time or from time to time, at a price equal to, greater than or less than the face amount of the bonds as the State Treasurer may determine to be in the best interests of the State.

All expenses incurred in the preparation, sale and issuance of the refunding obligations shall be paid by the State Treasurer from the proceeds of any such refunding obligations or any other available moneys.

(d)(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money at such rate or rates of interest as the State Treasurer may determine to be in the best interests of the State, which may vary from time to time as hereinafter authorized, and to execute and issue bond anticipation notes or notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of any bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of such bonds;

b. For the payment of interest upon or any installment of principal of any of the bonds then outstanding, if there shall not be sufficient funds in the State Treasury with which to pay the interest or installment of principal as they respectively become due; or

c. For the renewal of any loan evidenced by bond anticipation notes or notes herein authorized.

(2) Funds derived from the sale of bonds may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of such bonds.

Nothing in this Article shall be construed as a limitation on the duration of any deposit in trust for the retirement of outstanding obligations which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption.

(e) Coupons (if any) and any evidences of additional interest appertaining to bonds and notes shall, after the maturity of such coupons or evidences of additional indebtedness, be receivable in payment of all taxes, debts, dues, licenses, fines and demands of any kind whatever due the State.

(f) All refunding obligations shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for inheritance and gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the refunding obligations is not subject to taxation as income.

(g) Refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities in which all public officers, agencies and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such refunding obligations, coupons (if any) and any evidences of additional indebtedness are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on refunding obligations, coupons (if any) and any evidences of additional indebtedness to the same extent as pledged to the outstanding obligations being refunded. To the extent additional security has been pledged to outstanding obligations, such additional security may, at the discretion of the State, be continued and similarly pledged to the appropriate refunding obligations, coupons (if any) and any evidences of additional indebtedness. (1935, c. 445, s. 6; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1995, c. 46, s. 15.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, rewrote subsection (f).

Chapter 143.

Editor's Note. — The legislation and annotations affecting Chapter 143 have been included in a recently published replacement chapter.

Chapter 143A.

State Government Reorganization.

Article 1.

General Provisions.

Sec.
143A-11. Principal departments.

Article 5.

Department of Public Instruction.

143A-44.1. Creation.

Sec.
143A-44.2. State Board of Education; transfer of powers and duties to State Board.
143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.

Article 1.

General Provisions.

§ 143A-11. Principal departments.

Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments:

(1) Office of the Governor.
(2) Office of the Lieutenant Governor.
(3) Department of the Secretary of State.
(4) Department of State Auditor.
(5) Department of State Treasurer.
(6) Department of Public Instruction.
(7) Department of Justice.
(8) Department of Agriculture.
(9) Department of Labor.
(10) Department of Insurance.
(11) through (13) Repealed by Session Laws 1995, c. 509, s. 96, effective July 29, 1995.
(14) Repealed by Session Laws 1973, c. 476, s. 6.
(15), (16) Repealed by Session Laws 1995, c. 509, s. 96, effective July 29, 1995.
(17), (18) Repealed by Session Laws 1973, c. 476, s. 6.
(19) Repealed by Session Laws 1973, c. 620, s. 9. (1971, c. 864, s. 1; 1973, c. 476, s. 6; c. 620, s. 9; 1975, c. 716, s. 7; 1977, c. 771, s. 4; 1989, c. 727, s. 218(120); c. 751, s. 7(17); 1991 (Reg. Sess., 1992), c. 959, s. 36; 1993, c. 522, s. 12; 1995, c. 509, s. 96.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, deleted former subdivisions (11), which read "Department of Administration"; (12), which read "Department of Transportation"; (13), which read "Department of Environment, Health, and Natural Resources"; (15), which read "Department of Social Rehabilitation and Control"; and (16), which read "Department of Commerce".

ARTICLE 5.

Department of Public Instruction.

§ 143A-44.1. Creation.

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IV, Section 4(1) of the Constitution. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been § 143A-39.

Session Laws 1995, c. 72, c. 5, made this section effective upon ratification. The act was ratified May 9, 1995.

§ 143A-44.2. State Board of Education; transfer of powers and duties to State Board.

The State Board of Education shall have all powers and duties conferred on the Board by this Article, delegated to the Board by the Governor, and conferred by the Constitution and laws of this State. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been § 143A-40.

Session Laws 1995, c. 72, c. 5, made this section effective upon ratification. The act was ratified May 9, 1995.

§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.

The office of the Superintendent of Public Instruction, as provided for by Article III, Section 7 of the Constitution, and the Department of Public Instruction are transferred to the Department of Public Instruction. The Superintendent of Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of Education, and shall have all powers and duties conferred by the Constitution, by the State Board of Education, Chapter 115C of the General Statutes, and the laws of this State. (1995, c. 72, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 72, s. 3 having been § 143A-42.

Session Laws 1995, c. 72, c. 5, made this section effective upon ratification. The act was ratified May 9, 1995.

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Part 3. Rules Review Commission.

Sec.
143B-30.1. Rules Review Commission created.

Article 2.

Department of Cultural Resources.

Part 3. Art Museum Building Commission.

143B-59. Art Museum Building Commission — members; selection; quorum; compensation.

Part 10A. State Capitol Preservation Act.

143B-80.5 through 143B-80.14. [Repealed.]

Part 16. State Library Commission.

143B-91. State Library Commission — members; selection; quorum; compensation.

Part 26. Advisory Committee on Abandoned Cemeteries.

143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

Part 27. Roanoke Voyages and Elizabeth II Commission.

143B-129 through 143B-131. [Repealed.]

Part 27A. Roanoke Island Commission.

143B-131.1. Commission established.
143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.
143B-131.3. Assignment of property; offices.
143B-131.4. Commission reports.
143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.
143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.
143B-131.7. Roanoke Island Commission — Counsel.
143B-131.8. Roanoke Island Commission Fund; Roanoke Island Commission Endowment Fund.
143B-131.9. Roanoke Island Commission staff.
143B-131.10. Exceptions.

Part 28. Andrew Jackson Historic Memorial Committee.

143B-132. Andrew Jackson Historic Memorial Committee.

Part 29. Veterans' Memorial Commission.

143B-133. Commission established.

Article 3.

Department of Human Resources.

Part 1. General Provisions.

143B-139.5. Department of Human Resources; adult care State/county share of costs.

Part 1A. Consolidated County Human Services.

143B-139.7. Consolidated county human services funding.

Part 4. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

143B-148. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — members; selection; quorum; compensation.

Part 5A. S.O.S. Program.

143B-152.1. Establishment of program; purpose; goals.
143B-152.2. Definitions.
143B-152.3. Administration of the program.
143B-152.4. Eligible applicants; application for grants.

Sec.

143B-152.5. Grants review and selection.

143B-152.6. Cooperation of State and local agencies.

143B-152.7. Program evaluation; reporting requirements.

143B-152.8, 143B-152.9. [Reserved.]

Part 5B. Family Resource Center Grant Program.

143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

143B-152.11. Administration of program.

143B-152.12. Eligible applicants: applications for grants.

143B-152.13. Grants review and selection.

143B-152.14. Cooperation of State and local agencies.

143B-152.15. Program evaluation; reporting requirements.

Part 6. Social Services Commission.

143B-153. Social Services Commission — creation, powers and duties.

Part 10A. Child Day-Care Commission.

143B-168.4. Child Day-Care Commission — members; selection; quorum.

Part 10B. Early Childhood Initiatives.

143B-168.11. Early childhood initiatives; purpose; definitions.

143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

143B-168.13. Implementation of program; duties of Department and Secretary.

143B-168.14. Local partnerships; conditions.

143B-168.15. Use of State funds.

143B-168.16. Home-centered services; consent.

Part 13. Council on Developmental Disabilities.

143B-178. Council on Developmental Disabilities — definitions.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation.

Sec.

143B-181.1A. Plan for serving older adults; inventory of existing data; cooperation by State agencies.

Part 14B. Long-Term Care.

143B-181.5. Long-term care policy.

143B-181.6. Purpose and intent.

143B-181.7 through 143B-181.9. [Repealed.]

143B-181.9A. [Repealed.]

Part 14C. Respite Care Program.

143B-181.10. Respite care program established; eligibility; services; administration; payment rates.

Part 14D. Long-Term Care Ombudsman Program.

143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

Part 28. North Carolina Council on the Holocaust.

143B-216.21. Membership; selection; quorum.

Article 4.

Department of Revenue.

Part 1. General Provisions.

143B-218.1. Report to Joint Legislative Commission on Governmental Operations.

Article 6.

Department of Correction.

Part 3. Parole Commission.

143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

Sec.

143B-267. Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

Part 5. Substance Abuse Advisory Council.

143B-270. Substance Abuse Advisory Council.

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

143B-273.15. Funding formula.

Article 7.

Department of Environment, Health, and Natural Resources.

Part 1. General Provisions.

143B-279.3. Department of Environment, Health, and Natural Resources — structure.

143B-279.6. Consolidated county human services funding.

143B-279.7. Fish kill response protocols; report.

Part 4. Environmental Management Commission.

143B-282. Environmental Management Commission — creation; powers and duties.

143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

Part 5A. Marine Fisheries Commission.

143B-289.19. Office of Marine Affairs — creation.

Part 9. Water Pollution Control System Operators Certification Commission.

143B-301. Water Pollution Control System Operators Certification Commission — members; selection; removal; compensation; quorum; services.

Part 12. Forestry Council.

143B-308. Forestry Council — creation; powers and duties.

Sec.

143B-309. Forestry Council — members; chairperson; selection; removal; compensation; quorum.

143B-310. Forestry Council — meetings.

Part 13. Parks and Recreation Council.

143B-311 through 143B-313. [Repealed.]

Part 13A. North Carolina Parks and Recreation Authority.

143B-313.1. North Carolina Parks and Recreation Authority; creation; powers and duties.

143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

Part 22. North Carolina Zoological Park Council.

143B-336.1. Special Zoo Fund.

Article 8.

Department of Transportation.

Part 2. Board of Transportation—Secondary Roads Council.

143B-350. Board of Transportation — organization; powers and duties, etc.

Article 9.

Department of Administration.

Part 2. State Goals and Policy Board.

143B-371, 143B-372. [Repealed.]

Part 2A. North Carolina Progress Board.

143B-372.1. North Carolina Progress Board.

143B-372.2. Responsibilities.

143B-372.3. Staff.

Part 8A. Office of Marine Affairs.

143B-390.1. [Recodified.]

Part 9. North Carolina Human Relations Commission.

143B-392. North Carolina Human Relations Commission — Members; selection; quorum; compensation.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

Sec.

143B-403.2. Governor's Advocacy Council for Persons with Disabilities — members; selection; quorum; compensation.

Part 15. North Carolina State Commission of Indian Affairs.

143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

Part 18. North Carolina Internship Council.

143B-417. North Carolina Internship Council — creation; powers and duties.

143B-418. North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services.

Part 22. North Carolina Agency for Public Telecommunications.

143B-426.9. North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

Part 23. Information Technology [Resource Management] Commission.

143B-426.21. Information Resource Management Commission.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

Part 26. North Carolina Farmworker Council.

143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

Part 27. North Carolina Board of Science and Technology.

Sec.

143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

Part 28. Office of the State Controller.

143B-426.39. Powers and duties of the State Controller.

143B-426.39A. Information Highway Grants Advisory Council.

Article 10.

Department of Commerce.

Part 1. General Provisions.

143B-431. Department of Commerce — functions.

Part 2. Economic Development.

143B-434. Economic Development Board — creation, duties, membership.

143B-437A. Industrial Development Fund.

143B-437D. Economic development block grants.

143B-437E. Regional Development.

Part 10. North Carolina State Ports Authority.

143B-452. Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

143B-456. Issuance of bonds and notes.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

143B-475.1. Deferred prosecution, community service restitution, and volunteer program.

ARTICLE 1.

General Provisions.

Part 1. In General.

§ 143B-10. Powers and duties of heads of principal departments.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 743, s. 25, provides: "References in the Session Laws to any division of the Department of Environment, Health, and Natural Resources that is subdivided or renamed by this act shall be deemed to refer to the successor division. Every Session Law that refers to any division of the Department of Environment, Health, and Natural Resources to which this act applies or that relates to any power, duty, function, or obligation of any of those divisions and that continues in effect after this act becomes effective shall be construed so as to be consistent with this act. The repeal by this act of language authorizing the Secretary of Environment, Health, and Natural Resources to delegate any power, duty, or function is intended to repeal redundant language and does not alter the power of the Secretary of Environment, Health, and Natural Resources to assign or reassign any function vested in the Secretary or the Department of Environment, Health, and Natural Resources under G.S. 143B-10(a). This act shall not be construed to affect any pending action by or obligation due to any division of the Department of Environment, Health, and Natural Resources that is subdivided or renamed by this act."

Part 3. Rules Review Commission.

§ 143B-30.1. Rules Review Commission created.

(a) The Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of five members of the Commission. The Commission is an independent agency under Article III, Section 11 of the Constitution.

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Commission. Nothing in this Article shall be construed to exempt employees of the Commission from the State Personnel Act.

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code. (1985 (Reg. Sess., 1986), c. 1028, s. 32; 1987 (Reg. Sess., 1988), c. 1111, s. 2; 1989, c. 35, s. 2; 1989 (Reg. Sess., 1990), c. 1038, s. 18; 1991, c. 418, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 43; 1995, c. 490, s. 43.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the second sentence of subsection (a). For the applicability of this amendment, see Editor's note.

ARTICLE 2.

Department of Cultural Resources.

Part 3. Art Museum Building Commission.

§ 143B-58. Art Museum Building Commission — creation, powers and duties.

CASE NOTES

Cited in State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

§ 143B-59. Art Museum Building Commission — members; selection; quorum; compensation.

The Art Museum Building Commission of the Department of Cultural Resources shall consist of 15 members with nine appointed by the Governor, three persons who have served in the State Senate to be appointed by the President Pro Tempore of the Senate, and three persons who have served in the House of Representatives to be appointed by the Speaker of the House of Representatives. The initial members of the Commission shall be the members of the existing Art Museum Building Commission who shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this Article for the appointee whom he succeeds.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provision of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 40; 1995, c. 490, s. 8.1.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of the first paragraph. For the applicability of this amendment, see Editor's note.

§ 143B-61.1. Termination of the Art Museum Building Commission.

CASE NOTES

Cited in State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest.

Editor's Note. —
Session Laws 1993, c. 539, s. 1037, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10A. State Capitol Preservation Act.

§§ 143B-80.5 through 143B-80.14: Repealed by Session Laws 1995, c. 507, s. 12(a), effective July 28, 1995.

Part 14. North Carolina Arts Council.

§ 143B-87. North Carolina Arts Council — creation, powers and duties.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 12.4, provides that artwork created with grant funds shall not be displayed or performed in a publicly funded facility if the governing body of the community that has zoning jurisdiction over the facility objects to the display or performance.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97, biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Part 16. State Library Commission.

§ 143B-91. State Library Commission — members; selection; quorum; compensation.

(a) The State Library Commission shall consist of 15 members. All members shall have an interest in the development of library and information services in North Carolina. Eight members shall be appointed by the Governor. One member shall be appointed by the President Pro Tempore of the Senate. One member shall be appointed by the Speaker of the North Carolina House of Representatives. Three members shall be appointed by the North Carolina Public Library Directors Association. Two members shall be the President and the President-elect of the North Carolina Library Association or two appointees as determined by the North Carolina Library Association's Board of Directors. The State Librarian shall be an ex officio member and act as secretary to the Commission.

All appointments shall be for four-year terms with eight of the commissioners taking office on the first four-year cycle and seven commissioners taking office on the second four-year cycle. Any appointment to fill a vacancy in one of the positions appointed by the Governor, President Pro Tempore or Speaker of the House of Representatives shall be for the remainder of the unexpired term. Appointees shall not serve more than two successive four-year terms.

The Governor shall choose a chairperson from among the gubernatorial appointees. The chairperson shall serve not more than two successive two-year terms as chair.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses as provided in G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources.

The Commission shall meet at least twice a year.

(b) There shall be standing committees established to advise the Secretary of Cultural Resources, the Commission, and the State Librarian. These committees shall be: Public Library Development; Interlibrary Cooperation; State Government Information Services; State Library Development; and any other committee deemed appropriate. Each committee shall be composed of a committee chairperson and at least six persons appointed annually by the Secretary of Cultural Resources with the approval of the Commission. At least one of the members of each committee shall be a member of the Commission. Each committee shall report to the Commission at least once a year. (1973, c. 476, s. 83; 1981, c. 918, s. 3; 1991, c. 757, s. 3; 1995, c. 490, s. 53.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the fourth sentence of the first paragraph of subsection (a) and "President Pro Tempore" for "Lieutenant Governor" in the second sentence of the second paragraph of subsection (a). For the applicability of this amendment, see editor's note.

Part 26. Advisory Committee on Abandoned Cemeteries.

§ 143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

(a) There is created the Advisory Committee on Abandoned Cemeteries to be composed of 17 members appointed as follows:

(1) Two by the Governor;
(2) One by the President Pro Tempore of the Senate;
(3) One by the Speaker of the House;
(4) One by the Secretary of the Department of Cultural Resources;
(5) One by the Executive Director of the North Carolina Commission of Indian Affairs, Department of Administration;
(6) One each by the chief executive of the following organizations, from the membership of the organization:
  a. North Carolina Archaeological Council;
  b. North Carolina Association of County Commissioners;
  c. North Carolina Chapter of the Daughters of the American Revolution;
  d. North Carolina Chapter of the Society of the Cincinnati;
  e. North Carolina Chapter of the Sons of the American Revolution;
  f. North Carolina Genealogical Society;
  g. North Carolina Historical Commission;
  h. North Carolina League of Municipalities;
  i. Society of the Colonial Dames of America in the State of North Carolina;

j. Sons of Confederate Veterans;
k. United Daughters of the Confederacy.

(b) Members shall be appointed for staggered four-year terms beginning July 1 of odd-numbered years and shall serve until their successors are appointed and qualified. To create and maintain staggered terms, one member appointed by the Governor and the members appointed by the Speaker of the House, North Carolina Archaeological Council, North Carolina Chapter of the Daughters of the American Revolution, North Carolina Chapter of the Sons of the American Revolution, North Carolina Genealogical Society, North Carolina League of Municipalities, and the Sons of Confederate Veterans shall be appointed for two-year terms to expire June 30, 1983, at which time their successor shall be appointed pursuant to this section for four-year terms. The remaining committee members shall be appointed for four-year terms.

(c) Members shall serve without salary or compensation for their actual expenses resulting from the performance of their official duties.

(d) An appointment to fill a vacancy on the committee shall be made according to the procedures for appointment for regular terms, pursuant to this section. Any appointment to fill a vacancy on the committee for any reason shall be for the balance of the unexpired term.

(e) Upon its appointment the committee shall organize by electing from its membership a chairman and a vice-chairman. It shall be the duty of the committee to review existing statutes relating to cemeteries, make recommendations to the General Assembly concerning new statutes, and to assist the department in its efforts to collect information on abandoned cemeteries. (1981, c. 1016, s. 1; 1995, c. 490, s. 1.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (a)(2). For the applicability of this amendment, see editor's note.

Part 27. Roanoke Voyages and Elizabeth II Commission.

§§ 143B-129 through 143B-131: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(c), effective October 1, 1994.

Cross References. — As to the Roanoke Island Commission, see now § 143B-131.1 et seq.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(b), effective October 1, 1994, amended Session Laws 1985, c. 673, ss. 3.2 and 3.3 (see Editor's notes following G.S. 143B-130 and 143B-131 in the main pamphlet) by deleting "Section 2" and substituting "Section 3".

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Part 27A. Roanoke Island Commission.

§ 143B-131.1. Commission established.

There is established the Roanoke Island Commission. The Commission shall be an independent commission, but shall be located within the Department of Cultural Resources for historic resource management, organizational, and budgetary purposes. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(e), makes this Part effective October 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(d) provides: "The personnel, personal property, and unexpended balances of appropriations, allocations, or other funds for the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, and the Roanoke Island Commission are transferred from the Department of Cultural Resources to the Roanoke Island Commission."

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, in the second sentence added "an independent commission, but shall be", and substituted "historic resource management, organizational, and budgetary" for "organizational, budgetary, and administrative".

§ 143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and N.C. 400 travel corridors on Roanoke Island and the grounds on Ice Plant Island.

(2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) To supervise the development of Ice Plant Island and to manage future facilities.

(4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(6) To establish and collect a charge for admission to any property or event operated by the Commission.

(7) To solicit and accept gifts, grants, and donations.

(8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment, Health, and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.

(9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.

(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies.

(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.

(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.

(13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements consistent with State laws and Department rules to carry out the purposes of this Part and duties of the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(b).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, added "Purpose" in the catchline of this section; divided former subsection (a) to form present subsections (a) and (b); added the second sentence of present subsection (a); substituted "shall have the following powers and duties" for "may" in the introductory language of present subsection (b); in subdivision (b)(1) added "To" at the beginning of the subdivision, "maintenance", and "and the grounds on Ice Plant Island"; rewrote subdivisions (b)(2) and (b)(3); added "To" at the beginning of subdivision (b)(4); in subdivision (b)(5) inserted "to" preceding "identify", and deleted "Department" preceding "rules"; rewrote subdivision (b)(6); added "To" at the beginning of subdivisions (b)(7) and (b)(8); in subdivision (b)(9) added "To" at the beginning of the subdivision, deleted "regulations" following "rules", and added the last sentence; in the first sentence of subdivision (b)(10) added "To" at the beginning of the sentence, substituted "separate fund" for "'Roanoke Island Commission Fund'", and in the last sentence added "also"; added "to" preceding "coordinate" in subdivision (b)(11); added "To" at the beginning of subdivision (b)(13); added subdivision (b)(14); redesignated former subsection (b) as present subdivision (b)(15), and deleted the introductory language of former subsection (b), which read "Contract Authority. — The Commission may"; in subdivision (b)(15) added "To" at the beginning of the subdivision, and substituted "to" for "may" preceding "enter".

§ 143B-131.3. Assignment of property; offices.

Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Part. Assignments under this section shall be without reimbursement by the Commission to the agency from which the assignment was made. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.4. Commission reports.

Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for development and promotion of the Elizabeth II State Historic Site and Visitor Center. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly. The report shall include:

(1) A summary of actions taken by the Commission consistent with the powers and duties of the Commission set forth in G.S. 143B-131.2.

(2) Recommendations for legislation and administrative action to promote and develop the Elizabeth II State Historic Site and Visitor Center.

(3) An accounting of funds received and expended. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.

(a) The Commission shall also have the powers and duties established by Chapter 1194, Session Laws of 1981, as amended.

(b) Effective October 1, 1994, all lawful standards, rules, regulations, guidelines, contracts, agreements, permits, bylaws, and certificates of appropriateness of or issued by the Roanoke Voyages Corridor Commission or the Roanoke Voyages and Elizabeth II Commission shall remain in effect until modified, amended, revoked, repealed, or changed (as appropriate) by the Roanoke Island Commission in accordance with law.

(c) Effective October 1, 1994, all the assets and liabilities of the Roanoke Voyages and Elizabeth II Commission are vested in the Roanoke Island Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.

(a) The Commission shall consist of 24 voting members appointed as follows:

(1) Six members appointed by the Governor;

(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, at least two of whom reside in Dare County;

(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least two of whom reside in Dare County; and

(4) The following persons, or their designees, ex officio:
  a. The Governor;
  b. The Attorney General;
  c. The Secretary of the Department of Cultural Resources;
  d. The Secretary of the Department of Transportation;
  e. The Chair of the Dare County Board of Commissioners; and
  f. The Mayor of Manteo.

(b) Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint three members for a term of two years and three members for a term of three years.

(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint three members for a term of two years and three members for a term of three years.

(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint three members for a term of two years and three members for a term of three years.

Initial terms shall commence on October 1, 1994.

(c) The Governor shall appoint a chair biennially from among the membership of the Commission. The initial term of the chair shall commence on October 1, 1994. The Commission shall elect from its membership a vice-chair, a secretary, and treasurer to serve two-year terms. The Commission in its discretion may appoint a historian to serve at its pleasure. Initial terms shall commence on October 1, 1994.

(d) A vacancy in the Commission resulting from the resignation of a member or otherwise, shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(f) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Part.

(g) The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than two times a year.

(h) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(i) The Commission shall make its recommendations by September 15 of each year that terms expire for appointments for terms commencing November 1 of that year; provided the initial appointments for terms commencing October 1, 1994, shall be made upon recommendation of the Roanoke Island Historical Association. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.7. Roanoke Island Commission — Counsel.

The Attorney General shall assign legal counsel to the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.8. Roanoke Island Commission Fund; Roanoke Island Commission Endowment Fund.

(a) The Roanoke Island Commission Fund is established as a nonreverting Fund and shall be administered by the Roanoke Island Commission. Seventy-five percent (75%) of the revenues collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. In addition, gifts, donations, grants, or bequests received by the Commission for the purpose of carrying out its duties and purposes may also be deposited in the Fund.

The funds in the Roanoke Island Commission Fund shall be used for the expenses of the Roanoke Island Commission and the operation and maintenance of properties operated by the Commission.

(b) The Roanoke Island Commission Endowment Fund is established as a nonreverting Fund and shall be administered by the Commission. Twenty-five percent (25%) of the revenue collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. Until July 1, 2000, the revenues credited to the Roanoke Island Commission Endowment Fund and the interest earned on the revenue shall be held in reserve to create the principal for the Fund.

On and after July 1, 2000, eighty percent (80%) of the interest generated by the principal in the Roanoke Island Commission Endowment Fund shall be used by the Roanoke Island Commission to carry out its duties and purposes as set out by this Part. The Roanoke Island Commission may also use those interest funds for capital expenditures for the properties operated by the Commission. (1995, c. 507, s. 12.6(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(e) made this section effective upon ratification. The act was ratified July 28, 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143B-131.9. Roanoke Island Commission staff.

The Commission shall appoint and fix the salary of an Executive Director to serve at its pleasure and may hire other employees. Employees of the Commission who were transferred from the Department of Cultural Resources as of July 1, 1995, and who were subject to the State Personnel Act, Chapter 126 of the General Statutes, at the time of the transfer shall continue to be subject to that act. Employees of the Commission who were transferred but were not subject to the State Personnel Act at the time of transfer are not subject to the State Personnel Act. Employees of the Commission who were not transferred are not subject to the State Personnel Act unless the Commission designates the employee's position as subject to the State Personnel Act when the employee is hired. Once designated, a position remains subject to the State Personnel Act unless exempted in accordance with that act. (1995, c. 507, s. 12.6(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(e) makes this section effective upon ratification. The act was ratified July 28, 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 143B-131.10. Exceptions.

Notwithstanding G.S. 143-28, the following provisions do not apply to this Part: G.S. 143-16.3 and G.S. 143-23. (1995, c. 507, s. 12.6(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 12.6(e) makes this section effective upon ratification. The act was ratified July 28, 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Part 28. Andrew Jackson Historic Memorial Committee.

§ 143B-132. Andrew Jackson Historic Memorial Committee.

(a) The State of North Carolina and its citizens have long noted and recognized the origins and early life of Andrew Jackson, the nation's seventh president, in the Waxhaw region along the North Carolina-South Carolina border. It is important that this State recognize the origins and early life of this outstanding national leader in Western North Carolina. It is necessary to plan an appropriate memorial in Union County, North Carolina, to commemorate and display for all Americans the origins and early life of Andrew Jackson.

(b) There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President Pro Tempore of the Senate. Members shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term.

(c) The primary duties and responsibilities of the Committee are:

(1) To assist the Division of Archives and History, Department of Cultural Resources in determining the need for a permanent memorial to honor Andrew Jackson and to commemorate and display the origins and early life of Jackson in the Waxhaw region;

(2) To assist the Division of Archives and History, Department of Cultural Resources in determining the location, design, content, and form of a memorial, if the Committee determines that one is needed, at one of the sites associated with the early life of Andrew Jackson;

(3) To assist the Division of Archives and History, Department of Cultural Resources in determining the most appropriate methods for proceeding with the establishment and operation of the memorial, including methods for obtaining the necessary financial resources for property acquisition, capital expenditures, and operational expenses; and

(4) To select appropriate qualified researchers and research institutions to assist the Committee in undertaking any required studies to complete the Committee's duties and responsibilities.

(d) Members of this Committee may not receive per diem, travel reimbursement, or subsistence allowances.

(e) Administrative and staff services for the Committee shall be provided by the Division of Archives and History, Department of Cultural Resources, which shall also provide the Committee with information in its possession relating to past research concerning the origins and early life of Andrew Jackson. In addition, the Division of Archives and History, Department of Cultural Resources shall assist the Committee in preparing a report for submission to the General Assembly.

(f) Funds for the operation of the Committee shall be provided by the Department of Cultural Resources. (1985, c. 757, s. 180; 1995, c. 490, s. 7.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subsection (b). For the applicability of this amendment, see Editor's note.

Part 29. Veterans' Memorial Commission.

§ 143B-133. Commission established.

(a) There is created within the Department of Cultural Resources the Veterans' Memorial Commission.

(b) The Veterans' Memorial Commission shall consist of 15 members, none of whom shall be members of the North Carolina General Assembly. The appointments shall be made as follows:

(1) Five persons shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(2) Five persons shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) Five persons shall be appointed by the Governor.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled by appointment by the Governor.

(c) The members of the Commission shall serve for the life of the Commission.

(d) The members of the Commission shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) The majority of the Commission shall constitute a quorum for the transaction of business.

(f) The members of the Commission shall select a chairman and vice-chairman.

(g) The Commission shall meet at least once during each calendar quarter upon the call of the chairman. The initial meeting shall be called by the Secretary of Cultural Resources to be held no later than August 31, 1987.

(h) The Department of Cultural Resources shall provide administrative and support staff to the Commission to assist it in performing its duties.

(i) The Commission shall terminate and this Part expire upon dedication of the monument. (1987, c. 779, s. 1; 1995, c. 490, s. 62.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(2). For the applicability of this amendment, see Editor's note.

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-136. Department of Human Resources — creation.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 24.20, provides that the General Assembly intends to reorganize the Department of Human Resources, in consultation with the Office of State Budget and Management and the Department of Human Resources, to provide an alternative and improved approach to the organization and delivery of human services in North Carolina, and establishes the Independent Study Commission on the Reorganization of the Department of Human Resources, provides that the Commission shall contract with an independent management consulting firm to develop a reorganization plan, and that if the Commission is not appointed by August 15, 1996, the Division of Fiscal Research may begin the contracting process, provides for goals of the plan, provides that the independent management consultant shall make a final report to the Commission by March 1, 1997, and that the Commission shall report its findings and recommendations to the General Assembly by April 1, 1997, at which time the Commission shall terminate.

§ 143B-138. Department of Human Resources — functions and organization.

Editor's Note. —

As amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.26, and by Session Laws 1995, c. 324, s. 23.34, Session Laws 1994, Extra Session, c. 24, s. 36 provides that the Department of Human Resources shall conduct a study of the Division of Youth Services' juvenile justice system in order to ensure the efficacy, cost-effectiveness, and optimal utilization of the system and its continuum of services. Of the funds appropriated to the Department, one hundred fifty thousand dollars ($150,000) for the 1993-94 fiscal year is to be used to fund the study. The study is to be completed by October 1, 1995, and the results are to be reported to the General Assembly by November 1, 1995.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.5, provides that the Division of Family Development of the Department of Human Resources is abolished; that the Family Preservation Program is transferred to the Division of Social Services of the Department of Human Resources, the Family Support Program is transferred to the Division of Child Development of the Department of Human Resources, and the Office of Economic Opportunity is transferred to the Office of the Secretary of the Department of Human Resources; and that all transfers include the transfer of appropriations, budgets, and powers and duties.

Session Laws 1995, c. 324, s. 28.3,

provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 481, s. 1, as amended by Session Laws 1996, Second Extra Session, c. 18, s. 24.5, provides that the Secretary of the Department of Human Resources shall establish a special task force to determine a minimum reimbursement rate for Adult Developmental Activity Programs, that the task force shall review the current funding stream, and shall report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the results of its study, in time to be included in the Mental Health Study Commission's report to the 1997 General Assembly; and further provides for the members of the task force and for funding.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

§ 143B-139.4. Department of Human Resources; authority to assist private nonprofit foundations.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.1, provides: "Notwithstanding the limitations of G.S. 143B-139.4, the Secretary of the Department of Human Resources may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit corporations working to establish health care programs that will improve health care access while controlling costs."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

§ 143B-139.5. Department of Human Resources; adult care State/county share of costs.

State funds available to the Department of Human Resources shall pay fifty percent (50%), and the counties shall pay fifty percent (50%) of the authorized rates for care in adult care homes including area mental health agency-operated or contracted-group homes. (1991, c. 689, s. 128; 1995, c. 535, s. 31.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care" for "domiciliary" in the catchline; deleted "domiciliary" following "authorized rates for"; and substituted "adult care homes" for "homes for the aged and for family care homes".

Part 1A. Consolidated County Human Services.

§ 143B-139.7. Consolidated county human services funding.

(a) The Secretary of the Department of Human Resources shall adopt rules and policies to provide that:

(1) Any dedicated funding streams for local public health services, for social services, and for mental health, developmental disabilities, and substance abuse services may flow to a consolidated county human services agency and the consolidated human services board in the same manner as that for funding nonconsolidated county human services, unless a different manner of allocation is otherwise required by law.

(2) The fiscal accountability and reporting requirements pertaining to local health boards, social services boards, and area mental health authority boards apply to a consolidated human services board.

(b) The Secretary of the Department of Human Resources may adopt any other rule or policy required to facilitate the provision of human services by a consolidated county human services agency or a consolidated human services board.

(c) For the purposes of this section, "consolidated county human services agency" means a county human services agency created pursuant to G.S. 153A-77(b). "Consolidated human services board" means a county human services board established pursuant to G.S. 153A-77(b). (1995 (Reg. Sess., 1996), c. 690, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 690, s. 17, made this part effective July 1, 1996.

Part 4. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 143B-148. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services — members; selection; quorum; compensation.

(a) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources shall consist of 26 members:

(1) Four of whom shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. These members shall have concern for the problems of mental illness, developmental disabilities, alcohol and drug abuse. Members shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies

in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122;

(2) Twenty-two of whom shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and 10 at-large members.

a. Of these 22 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in developmental disabilities other than mental retardation, three shall have a special interest in alcohol abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.

b. The remaining seven members shall be appointed from the general public, other citizen groups, area mental health, developmental disabilities, and substance abuse authorities, or from other related agencies.

c. Of these 22 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.

d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. The terms of all Commission members appointed by the Governor shall be four years. The initial term of the person representing the 12th Congressional District shall begin January 3, 1993, and expire June 30, 1996. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members shall apply to all members of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) Commission members shall receive per diem, travel and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Human Resources. (1973, c. 476, s. 130; 1977, c. 679, s. 2; 1981, c. 51, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 55.1 through 57; 1989, c. 625, s. 23; 1991 (Reg. Sess., 1992), c. 1038, s. 17; 1995, c. 490, s. 34.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subdivision (a)(1). For the applicability of this amendment, see Editor's note.

Part 4A. Family Preservation Act.

§ 143B-150.5. Family Preservation Services Program established; purpose.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.5, provides that the Division of Family Development of the Department of Human Resources is abolished, and that the the Family Preservation Program is transferred to the Division of Social Services of the Department of Human Resources, which includes the transfer of all appropriations, budgets, and powers and duties.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Part 5A. S.O.S. Program.

§ 143B-152.1. Establishment of program; purpose; goals.

(a) There is created in the Department of Human Resources the Support Our Students (S.O.S.) Program. The purpose of the program is to award grants to neighborhood- and community-based organizations to establish local S.O.S. programs that provide high quality after-school activities for school-aged children and provide for comprehensive, collaborative delivery of services by public and nonpublic agencies to these children. These services shall be designed to enrich and make a positive impact on the lives of school-aged children. These after-school activities may include activities after the regular school day and activities on days that students are not required to attend school.

(b) The goals of the program are to:

(1) Reduce juvenile crime in local communities served by the program;

(2) Recruit community volunteers to provide positive adult role models for school-aged children and to help supervise after-school activities;

(3) Reduce the number of students who are unsupervised after school, otherwise known as "latchkey" children;

(4) Improve the academic performance of students participating in the program;

(5) Meet the physical, intellectual, emotional, and social needs of students participating in the program and improve their attitudes and behavior; and

(6) Improve coordination of existing resources and enhance collaboration so as to provide services to school-aged children effectively and efficiently. (1994, Ex. Sess., c. 24, s. 30(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, which enacted this Part, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, s. 73 makes this Part effective upon ratification. The Act was ratified March 26, 1994.

Session Laws 1994, Extra Session, c. 24, s. 30(b) to (e) provides:

"(b) of the funds appropriated to the Department of Human Resources for the S.O.S. Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars ($200,000) to administer the S.O.S. Program, to provide technical assistance to applicants and to S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

"(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

"(d) In awarding grants under the S.O.S. Program, the Department shall ensure that the continuation costs of the State of the Program in subsequent fiscal years do not exceed the cost of the Program for the 1994-95 fiscal year.

"(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

§ 143B-152.2. Definitions.

As used in this Part, "school-aged children" means children enrolled in kindergarten through the ninth grade. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.3. Administration of the program.

The Department shall develop and implement the Support Our Students (S.O.S.) Program. The Department shall:

(1) Sponsor a statewide conference each year for teams of interested representatives to provide background information and assistance regarding all aspects of the program;

(2) Disseminate information regarding the program to interested neighborhood and community groups;

(3) Develop and disseminate a request for applications to establish local S.O.S. programs;

(4) Provide initial technical assistance to grant applicants and ongoing technical assistance as grants are implemented;

(5) Administer funds appropriated by the General Assembly;

(6) Monitor the grants funded;

(7) Revoke a grant if necessary or appropriate;

(8) Develop and implement a performance-based evaluation system to evaluate the program, in accordance with G.S. 143B-152.7(a);

(9) Report on the program implementation to the General Assembly, the Joint Legislative Committee on Governmental Operations, and the Office of the Governor, in accordance with G.S. 143B-152.7(b); and

(10) Adopt any rules necessary to implement this Part. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.4. Eligible applicants; application for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall submit to the Department an application that includes the following information:

(1) Identification of one or more neighborhoods to be served by the local S.O.S. program, based on a needs assessment of existing conditions for school-aged children to be served. Data used in the needs assessment may include for each neighborhood to be served by a local program (i) dropout statistics, (ii) the number and percentage of school-aged children who participate in the federal subsidized lunch program, (iii) the number of suspensions and expulsions involving school-aged children, (iv) the number of children to be served, (v) the number and percentage of students with two working parents or one single parent to be served at a site, (vi) the incidence of juvenile crime in the neighborhood, and (vii) any other relevant or unique local demographic data.

Local authorities shall provide this or related information on a timely basis to local 501(c)(3) entities submitting applications to establish local S.O.S. programs;

(2) A three-year plan that addresses data used in the needs assessment and that includes proposed goals and anticipated outcomes of the local S.O.S. program. The plan shall be prepared after consultation with local after-school programs, schools, community organizations or groups which have as their purpose assisting or helping school-aged children who are at risk of failing in school or entering the juvenile justice system, or other appropriate groups. In addition, the three-year plan shall provide for regular collaborative efforts to seek input and advice from parents of the students being served and from other citizens who reflect the demographic conditions of the students being served;

(3) A statement of how grant funds would be used to address local problems and what other resources would be used to address the problems. This statement should include a list of services to be offered that are related to the goals and outcomes and should include plans for recruiting volunteers to assist in the program's activities; and

(4) A process for assessing on an annual basis the success of the local plan for addressing the goals of the local S.O.S. program. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.5. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local S.O.S. programs and administering grants to establish local S.O.S. programs.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.14, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality after-school services for school-aged children, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other neighborhoods and communities, and (v) any other factors which affect the well-being of school-aged children.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children with two working parents or one single parent to be served, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.6. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.7. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the S.O.S. Program. The Department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;
(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
(3) Enable the Department of the General Assembly to determine whether to modify the S.O.S. Program; and
(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

The Department shall also report annually to the Joint Legislative Commission on Governmental Operations and to the Governor on the implementation of the S.O.S. Program.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local S.O.S. Program has met the local needs, goals, and anticipated outcomes as set forth in the grant applications. (1994, Ex. Sess., c. 24, s. 30(a).)

§§ 143B-152.8, 143B-152.9: Reserved for future codification purposes.

Part 5B. Family Resource Center Grant Program.

§ 143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

(a) There is created in the Department of Human Resources the Family Resource Center Grant Program. The purpose of the program is to provide grants to establish family resource centers that provide services to children from birth through elementary school age and to their families that:

(1) Enhance the children's development and ability to attain academic and social success;
(2) Ensure a successful transition from early childhood education programs and child care to the public schools;
(3) Assist families in achieving economic independence and self-sufficiency; and
(4) Mobilize public and private community resources to help children and families in need.

(b) It is the intent of the General Assembly to encourage and support broad-based collaboration among public and private agencies and among people who reflect the racial and socioeconomic diversity in communities to develop initiatives that (i) prepare children to learn effectively and to have a successful school experience, (ii) enhance the ability of families to become advocates for and supporters of education for the children in their families, and (iii) enhance the ability of families to function as nurturing and effective family units.

(c) It is further the intent of the General Assembly that this program shall be targeted to those neighborhoods that have disproportionately high levels of (i) children who would be less likely to attain educational or social success, (ii) families with low incomes, and (iii) crime and juvenile delinquency. (1994, Ex. Sess., c. 24, s. 31(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 73, makes this Part effective upon ratification. The Act was ratified March 26, 1994.

Session Laws 1994, Extra Session, c. 24, which enacted this Part, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, s. 31(b) to (e) provides:

"(b) Of the funds appropriated to the Department of Human Resources for the Family Resource Center Grant Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars ($200,000) to administer the Family Resource Center Grant Program, to provide technical assistance to applicants and to local family resource centers, and to evaluate the local family resource centers. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

"(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

"(d) In awarding grants under the Family Resource Center Grant Program, the Department shall ensure that the continuation costs to the State of the program in subsequent fiscal years do not exceed the cost of the program for the 1994-95 fiscal year.

"(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

§ 143B-152.11. Administration of program.

The Department of Human Resources shall develop and implement the Family Resource Center Grant Program. The Department shall:

(1) Sponsor a statewide conference for teams of interested representatives to provide background information and assistance regarding all aspects of the program;

(2) Disseminate information regarding the program to interested local community groups;

(3) Provide initial technical assistance and ongoing technical assistance to grant recipients;

(4) Administer funds appropriated by the General Assembly;

(5) Monitor the grants funded and the ongoing operations of family resource centers;
(6) Revoke a grant if necessary or appropriate;
(7) Report to the General Assembly and the Joint Legislative Commission on Governmental Operations, in accordance with G.S. 143B-152.15; and
(8) Adopt rules to implement this Part. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.12. Eligible applicants: applications for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall identify the neighborhood or neighborhoods whose children and families will be served by a family resource center. The decision-making process for identifying and establishing family resource centers shall reflect the racial and socioeconomic diversity of the neighborhood or neighborhoods to be served.

(c) A grant application shall include a process for assessing on an annual basis the success of the local plan in addressing problems. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.13. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local family resource centers and administering grants to establish local family resource centers.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.5, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality services for children and their families, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other counties, (v) the availability of other resources or funds, (vi) the incidence of crime and juvenile delinquency, (vii) the amount needed to implement the proposal, and (viii) any other factors consistent with the intent of this Part.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children to be served with two working parents or one single parent, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.15.· Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the Family Resource Center Grant Program. The department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;

(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;

(3) Enable the Department and the General Assembly to determine whether to modify the Family Resource Center Grant Program; and

(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local family resource center has met the local needs, goals, and anticipated outcomes as set forth in the grant application. (1994, Ex. Sess., c. 24, s. 31(a).)

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:
    1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
    2. Standards to implement all services established under the Comprehensive Annual Services Plan;
    3. Maximum rates of payment for provision of social services;
    4. Fees for services to be paid by recipients of social services;
    5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
    6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:
    1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
    2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
    3. Contracting for and purchasing services; and
    4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:
a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
b. For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in adult care homes adult care homes;
c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
e. Repealed by Session Laws 1981, c. 562, s. 7.
f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other

states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary day care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110-130.1. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32.)

Editor's Note. — Subdivision (3)b. of this section was amended by Session Laws 1995, c. 535, s. 32 in the coded bill drafting format provided by § 120-20.1. The act failed to incorporate the changes in subdivision (3)b. made by Session Laws 1995, c. 449, s. 4. Subdivision (3)b. is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1995, c. 449, s. 5, provides for the Department to report on the implementation of that act, which amended this section, to the North Carolina Study Commission on Aging, and to evaluate the effects of the act and report to the Joint Legislative Commission on Governmental Operation and the Study Commission on Aging on the feasibility of continuing the requirements of the act.

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — Session

Laws 1995, c. 449, s. 4, effective July 18, 1995, deleted the second sentence in subdivision (3)b. regarding review by the Joint Legislative Commission on Governmental Operations of proposed personnel requirements that would impose additional costs on owners of domiciliary homes.

Session Laws 1995, c. 535, s. 32, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" three times in subdivision (3)b.

Part 10A. Child Day-Care Commission.

§ 143B-168.4. Child Day-Care Commission — members; selection; quorum.

(a) The Child Day-Care Commission of the Department of Human Resources shall consist of 15 members. Seven of the members shall be appointed by the Governor and eight by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, day care and who have no financial interest in a day care facility or home. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving day care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be day care providers, one of whom shall be affiliated with a for profit day care facility, one of whom shall be affiliated with a for profit day care home, and one of whom shall be affiliated with a nonprofit home or facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be day care providers, one affiliated with a for profit day care facility or home, and one affiliated with a nonprofit day care facility or home. None may be employees of the State.

(b) Members shall be appointed as follows:

(1) Of the Governor's initial appointees, four shall be appointed for terms expiring June 30, 1986, and three shall be appointed for terms expiring June 30, 1987;

(2) Of the General Assembly's initial appointees appointed upon recommendation of the President of the Senate, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987;

(3) Of the General Assembly's initial appointees appointed upon recommendation of the Speaker of the House of Representatives, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121. After the initial appointees' terms have expired, all members shall be appointed to serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) A vacancy occurring during a term of office is filled:

(1) By the Governor, if the Governor made the initial appointment;

(2) By the General Assembly, if the General Assembly made the initial appointment in accordance with G.S. 120-122.

At its first meeting the Commission members shall elect a chairman to serve a two-year term. Chairmen shall be elected for two-year terms thereafter. The same member may serve as chairman for two consecutive terms.

Commission members may be reappointed and may succeed themselves for a maximum of four consecutive terms.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1985, c. 757, s. 155(a); 1987 (Reg. Sess., 1988), c. 896; 1989, c. 342; 1995, c. 490, s. 10.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added the subsection (a), (b) and (c) designations; and added "Pro Tempore" throughout subsection (a). For the applicability of this amendment, see Editor's note.

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 23.12, provides that the General Assembly finds, in consultation with the Governor, that it is essential to develop comprehensive programs that provide high quality early childhood education and development services locally, and that these programs be developed in a manner that will provide quality assurance and performance-based accountability; and further provides that the Department of Human Resources shall develop and implement a performance-based evaluation system to evaluate the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes, and provides for the design of the system by the Department.

Session Laws 1995, s. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 23.13, as amended by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(h), provides: "Counties participating in the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Educational Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Day care providers shall, at a minimum, comply with the applicable requirements for Sate licensure or registration pursuant to Article 7 of Chapter 110 of the General Statues, with other applicable requirements of State law or rule, including rules adopted for nonregistered day care by the Social Services Commission, and with applicable federal regulations."

Session Laws 1995, c. 324, s. 27A, as amended by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(f), provides the terms and conditions to which the Early Childhood Education and Development Initiatives under Part 10B of Article 3 of chapter 143B of the General Statutes are subject for the 1995-97 fiscal biennium.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 24.29(a) provides in part that notwithstanding any provision of Part 10B of Article 3 of Chapter 143B of the General Statutes, the Department of Human Resources and the North Carolina Partnership for Children, Inc., jointly shall ensure that all of the recommendations contained in the Smart Start Performance Audit are implemented by July 1, 1997, together with any specific modification to any recommendations made in this subsection or elsewhere in this section. The Partnership shall report quarterly to the Joint Legislative Commission on Governmental Operations on its progress and the Department shall report to the Commission by February 1, 1997 on any changes that must be made to Part 10B of Article 3 of Chapter 143B of the General Statutes or to any other statutes or rules.

Session Laws 1996, Second Extra Session, c. 18, s. 24.29(i), (j), and (k), provide that, notwithstanding any policy to the contrary, the Frank Porter Graham Child Development Center may use any method legally available to it to track children who are participating or who have participated in any Early Childhood Education and Development Initiative in order to carry out its ongoing evaluation of the Early Childhood Education and Development Initiatives Program; the Department of Human Resources and the North Carolina Partnership shall plan and prepare for implementation in counties not yet phased in, develop a statewide resource and referral database, and continue evaluation; and for the allocation of funds and for the use of those funds.

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 143B-168.11. Early childhood initiatives; purpose; definitions.

(a) The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, may support through financial and other means, the North Carolina Partnership for Children, Inc. and comparable local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their plans.

(b) The following definitions apply in this Part:

(1) Board of Directors. — The Board of Directors of the North Carolina Partnership for Children, Inc.

(2) Department. — The Department of Human Resources.

(3) Local Partnership. — A local, private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project under this Part.

(4) North Carolina Partnership. — The North Carolina Partnership for Children, Inc.

(5) Secretary. — The Secretary of Human Resources. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1.)

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 39 members:

a. The Secretary of Human Resources, ex officio;

b. The Secretary of Environment, Health, and Natural Resources, ex officio;

c. The Superintendent of Public Instruction, ex officio;

d. The President of the Department of Community Colleges, ex officio;

e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;

f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives;

g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor;

h. The President Pro Tempore of the Senate, or a designee;

i. The Speaker of the House of Representatives, or a designee;

j. The Majority Leader of the Senate, or a designee;

k. The Majority Leader of the House of Representatives, or a designee;

l. The Minority Leader of the Senate, or a designee; and

m. The Minority Leader of the House of Representatives, or a designee.

(2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan

to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop and implement a centralized accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. The following local partnerships shall be required to participate in the centralized accountability system developed by the North Carolina Partnership pursuant to this subdivision:

a. Local partnerships which have significant deficiencies in their accounting systems, internal controls, and contract management systems, as determined by the North Carolina Partnership based on the annual financial audits of the local partnerships conducted by the Office of the State Auditor; and

b. Local partnerships which are in the first two years of operation following their selection. At the end of this two-year period, local partnerships shall continue to participate in the centralized accounting and contract management system. With the approval of the North Carolina Partnership, local partnerships may perform accounting and contract management functions at the local level using the standardized and uniform accounting system, internal controls, and contract management systems developed by the North Carolina Partnership.

Local partnerships which otherwise would not be required to participate in the centralized accounting and contract management system pursuant to this subdivision may voluntarily choose to participate in the system. Participation or nonparticipation shall be for a minimum of two years, unless, in the event of nonparticipation, the North Carolina Partnership determines that any partnership's annual financial audit reveals serious deficiencies in accounting or contract management.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated "superior", "satisfactory", or "needs improvement". Local partnerships rated "superior" shall receive, to the extent that funds are available, a ten percent (10%) increase in their annual funding allocation. Local partnerships rated "satisfactory" shall receive their annual funding allocation. Local partnerships rated "needs improvement" shall receive ninety percent (90%) of their annual funding allocation.

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chairs of local partnerships' board of directors, and seven shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall serve two-year terms and may not serve more than two consecutive terms. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) The North Carolina Partnership shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor on the ongoing progress of all the local partnerships' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 324, s. 27A.1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.33, provides that the Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., shall ensure that the selection process for the additional local demonstration projects for the Early Childhood Education and Development Initiatives funded in the act shall include (1) acceptance of applications from counties that have not yet applied for funding, (2) acceptance of additional information from counties that have already applied, and (3) consideration of the needs and resources assessment that has been conducted in each county.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subdivision (a)(1) substituted "39" for "33" in the introductory language, added subdivisions (a)(1)h. through (a)(1)m., and made punctuation and stylistic changes.

The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "The North Carolina Partnership shall have a Board of Directors consisting" for "Members of the Board of Directors shall consist" in subdivision (a)(1); and added subdivisions (a)(4) through (a)(9).

§ 143B-168.13. Implementation of program; duties of Department and Secretary.

(a) The Department shall:

(1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local demonstration projects shall represent the various geographic areas of the State.

(2) Develop and conduct a statewide needs and resource assessment every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation with the North Carolina Partnership and with the local partnerships. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the North Carolina Partnership.

(3) Provide technical and administrative assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that State leave policy is not applied to the North Carolina Partnership and the local partnerships. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the De-

partment may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(c), effective July 1, 1996.

(6) Annually update its funding formula using the most recent data available. These amounts shall serve as the basis for determining "full funding" amounts for each local partnership.

(b) The Secretary shall approve, upon recommendation of the North Carolina Partnership, all allocations of State funds to local demonstration projects. The Secretary also shall approve all local plans. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, rewrote subdivisions (a)(2) and (a)(4); deleted former subdivision (a)(5) regarding quarterly reports; and added subdivision (a)(6).

§ 143B-168.14. Local partnerships; conditions.

(a) **(See editor's note for compliance date)** In order to receive State funds, the following conditions shall be met:

(1) Each local demonstration project shall be coordinated by a new local partnership responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local partnership shall consist of members including representatives of public and private nonprofit health and human service agencies, day care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part.

(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.

(4) Each local partnership shall participate in the uniform, standard fiscal accountability plan developed and adopted by the North Carolina Partnership.

(b) Each local partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the local partnerships. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(d)(1).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 24.29(d)(2) provides: "Local partnerships shall be in compliance with this subsection [Session Laws 1996, Second Extra Session, c. 18, s. 24.29(d)] effective July 1, 1997."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subdivision (a)(4).

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

(1) Child day care services, including:
   a. Child day care subsidies to reduce waiting lists;
   b. Raising the county child day care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child day care services;
   c. Raising the income eligibility for child day care subsidies to seventy-five percent (75%) of the State median family income;
   d. Start-up funding for child day care providers;
   e. Assistance to enable child day care providers to conform to licensing and building code requirements;
   f. Child day care resources and referral services;

g. Enhancement of the quality of child day care provided;
h. Technical assistance for child day care providers;
i. Quality grants for child day care centers or family child day care homes;
j. Expanded services or enhanced rates for children with special needs;
k. Head Start services;
l. Development of comprehensive child day care services that include child health and family support;
m. Activities to reduce staff turnover;
n. Activities to serve children with special needs;
o. Transportation services related to providing child day care services;
p. Evaluation of plan implementation of child day care services; and
q. Needs and resources assessments for child day care services.

(2) Family- and child-centered services, including early childhood education and child development services, including:
a. Enhancement of the quality of family- and child-centered services provided;
b. Technical assistance for family- and child-centered services;
c. Needs and resource assessments for family- and child-centered services;
d. Home-centered services; and
e. Evaluation of plan implementation of family- and child-centered services.

(3) Other appropriate activities and services for child day care providers and for family- and child-centered services, including:
a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and
b. Procedures to ensure that infants and young children receive needed health, immunization, and related services.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Local partnerships may carry over funds from one fiscal year to the next, subject to the following conditions:

(1) Local partnerships in their first year of receiving direct services funding may, on a one-time basis only, carry over any unspent funds to the subsequent fiscal year.

(2) Any local partnership may carry over any unspent funds to the subsequent fiscal year, subject to the limitation that funds carried over may not exceed the increase in funding the local partnership received during the current fiscal year over the prior fiscal year.

(g) Not less than thirty percent (30%) of each local partnership's direct services allocation shall be used to expand child day care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child day care services as described in this section. (1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 509, s. 97; 1996, 2nd Ex. Sess., c. 18, s. 24.29(e).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "statewide" for "Statewide" in subsection (b).

The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (d) twice deleted "by the Secretary" following "designated," substituted "direct" for "activities and," substituted "North Carolina Partnership" for "Secretary," substituted "local partnership" for "county," added the last sentence; and added subsections (f) and (g).

§ 143B-168.16. Home-centered services; consent.

No home-centered services including home visits or in-home parenting training shall be allowed under this Part unless the written, informed consent of the participating parents authorizing the home-centered services is first obtained by the local partnership, educational institution, local school administrative unit, private school, not-for-profit organization, governmental agency, or other entity that is conducting the parenting program. The participating parents may revoke at any time their consent for the home-centered services.

The consent form shall contain a clear description of the program including (i) the activities and information to be provided by the program during the home visits, (ii) the number of expected home visits, (iii) any responsibilities of the parents, (iv) the fact, if applicable, that a record will be made and maintained on the home visits, (v) the fact that the parents may revoke at any time the consent, and (vi) any other information as may be necessary to convey to the parents a clear understanding of the program.

Parents at all times shall have access to any record maintained on home-centered services provided to their family and may place in that record a written response to any information with which they disagree that is in the record. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Part 13. Council on Developmental Disabilities.

§ 143B-178. Council on Developmental Disabilities — definitions.

The following definitions apply to this Chapter:

(1) The term "developmental disability" means a severe, chronic disability of a person which:
  a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
  c. Is likely to continue indefinitely;
  d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
  e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(2) The term "services for persons with developmental disabilities," as it is used in this Article, means:
  a. Alternative community living arrangement services, employment related activities, child development services, and case management services; and
  b. Any other specialized services or special adaptations of generic services including diagnosis, evaluation, treatment, personal care, day care, adult care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services, and transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities. (1973, c. 476, s. 168; 1977, c. 881, ss. 1, 2; 1979, c. 752, s. 1; 1987, c. 780; 1995, c. 535, s. 33.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care" for "domiciliary care" in subdivision (2)b.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

§ 143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation.

The Governor's Advisory Council on Aging of the Department of Human Resources shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the Employment Security Commission; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment, Health, and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172; 1975, c. 128, ss. 1, 2; 1977, c. 242, s. 2; c. 771, s. 4; 1983, c. 40, s. 2; 1989, c. 727, s. 218(127); 1993, c. 522, s. 16; 1995, c. 490, s. 3.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the first, fifth and sixth sentences of the first paragraph. For the applicability of this amendment, see Editor's note.

§ 143B-181.1A. Plan for serving older adults; inventory of existing data; cooperation by State agencies.

(a) The Division of Aging, Department of Human Resources shall submit a regularly updated plan to the General Assembly by March 1 of every other odd-numbered year, beginning March 1, 1995. This plan shall include:

(1) A detailed analysis of the needs of older adults in North Carolina, based on existing available data, including demographic, geographic, health, social, economical, and other pertinent indicators;

(2) A clear statement of the goals of the State's long-term public policy on aging;

(3) An analysis of services currently provided and an analysis of additional services needed; and

(4) Specific implementation recommendations on expansion and funding of current and additional services and services levels.

(b) The Division of Aging, Department of Human Resources, shall maintain an inventory of existing data sets regarding the elderly in North Carolina, in order to ensure that adequate demographic, geographic, health, social, economic, and other pertinent indicators are available to generate its regularly updated Plan for Serving Older Adults.

Upon request, the Division shall make information on these data sets available within a reasonable time.

All State agencies and entities that possess data relating to the elderly, including the Department of Human Resources' Division of Health Services, the Division of Facility Services, and the Division of Social Services, and the Department of Administration, shall cooperate, upon request, with the Division of Aging in implementing this subsection. (1989, c. 52, s. 1; c. 695, s. 1; 1995, c. 253, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 15, 1995, in subsection (a), in the first sentence inserted "other" preceding "odd-numbered" and added "beginning March 1, 1995" to the end of the sentence, and deleted the second sentence which read "Beginning March 1, 1991, a summary plan for serving older adults shall be submitted but the full plan only for 1991 shall be submitted to the General Assembly by July 1, 1991."

Part 14B. Long-Term Care.

§ 143B-181.5. Long-term care policy.

The North Carolina General Assembly finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care provision continues to be the family and friends. However, these traditional caregivers are increasingly employed outside the home. There is growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The North Carolina General Assembly further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services in the home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The North Carolina General Assembly finds that as other long-term care options become more available, the relative need for institutional care will stabilize or decline relative to the growing aging population. The General Assembly recognizes, however, that institutional care will continue to be a critical part of the State's long-term care options and that such services should promote individual dignity, autonomy, and a home-like environment. (1981, c. 675, s. 1; 1995 (Reg. Sess., 1996), c. 583, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 20, 1996, substituted "Long-term care policy" for "Department to develop systems of long-term care" in the catchline; and rewrote this section.

§ 143B-181.6. Purpose and intent.

It is the North Carolina General Assembly's intent in the State's development and implementation of long-term care policies that:

(1) Long-term care services administered by the Department of Human Resources and other State and local agencies shall include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;

(2) Home and community-based services shall be developed, expanded, or maintained in order to meet the needs of consumers in the least confusing manner and based on the desires of the elderly and their families;

(3) All services shall be responsive and appropriate to individual need and shall be delivered through a seamless system that is flexible and responsive regardless of funding source;

(4) Services shall be available to all elderly who need them but targeted primarily to the most frail, needy elderly;

(5) State and local agencies shall maximize the use of limited resources by establishing a fee system for persons who have the ability to pay;
(6) Institutional care shall be provided in such a manner and in such an environment as to promote maintenance or enhancement of the quality of life of each resident and timely discharge to a less restrictive care setting when appropriate; and
(7) State health planning for institutional bed supply shall take into account increased availability of other home and community-based services options. (1981, c. 675, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 583, s. 2.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 20, 1996, substituted "Purpose and intent" for "Screening program for elderly" in the catchline; and rewrote this section.

§§ 143B-181.7 through 143B-181.9: Repealed by Session Laws 1995 (Regular Session, 1996), c. 583, s. 2, effective June 20, 1996.

§ 143B-181.9A: Repealed by Session Laws 1995, c. 179, s. 1, effective June 6, 1995.

Part 14C. Respite Care Program.

§ 143B-181.10. Respite care program established; eligibility; services; administration; payment rates.

(a) A respite care program is established to provide needed relief to caregivers of impaired adults who cannot be left alone because of mental or physical problems.

(b) Those eligible for respite care under the program established by this section are limited to those unpaid primary caregivers who are caring for people 60 years of age or older and their spouses, or those unpaid primary caregivers 60 years of age or older who are caring for persons 18 years of age or older, who require constant supervision and who cannot be left alone either because of memory impairment, physical immobility, or other problems that renders them unsafe alone.

(c) Respite care services provided by the programs established by this section may include:
(1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;
(2) Counseling and accessing available local, regional, and State services;
(3) Support group development and facilitation;
(4) Assessment and care planning for the patient of the caregiver;
(5) Attendance and companion services for the patient in order to provide release time to the caregiver;
(6) Personal care services, including meal preparation, for the patient of the caregiver;

(7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

Program funds may provide no more than the current adult care reimbursement rate for out of home placement. An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, adult care home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year.

(d) The respite care program established by this section shall be administered by the Division of Aging consistent with the policies and procedures of the Older Americans Act. The programs shall be coordinated with other appropriate Divisions in the Department of Human Resources, and with agencies and organizations concerned with the delivery of services to frail older adults and their unpaid caregivers. The Division shall choose respite care provider agencies in accordance with procedures outlined under the Older Americans Act and shall include the following criteria: documented capacity to provide care, adequacy of quality assurance, training, supervision, abuse prevention, complaint mechanisms, and cost. All funds allocated by the Division pursuant to this section shall be allocated on the same basis as funding under the Older Americans Act.

(e) Funding for the Division of Aging to administer this program shall not exceed the percentage allowed for administration as provided in the Older Americans Act but shall not be less than that budgeted for administration in fiscal year 1988-89.

(f) Unless prohibited by federal law, caregivers receiving respite care services through the program established by this section shall pay for some of the services on a sliding scale depending on their ability to pay. The Division of Aging, in consultation with the Councils of Governments in each region, shall specify rates of payment for the services. (1985 (Reg. Sess., 1986), c. 1014, s. 7.1; 1989, c. 500, s. 96(a); c. 770, s. 63; 1991, c. 332, s. 1; 1995, c. 535, s. 34.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care home" for "domiciliary home" in subsection (c).

Part 14D. Long-Term Care Ombudsman Program.

§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level. (1989, c. 403, s. 1; 1995, c. 254, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "42 U.S.C. § 3001 et seq." for "42 U.S.C. § 3001-3057g" in the last sentence.

§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

(1) "Long-term care facility" means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).

(2) "Resident" means any person who is receiving treatment or care in any long-term care facility.

(3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.

(4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article. (1989, c. 403, s. 1; 1995, c. 254, s. 2; c. 535, s. 35.)

Editor's Note. —

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — Session Laws 1995, c. 254, s. 2, effective July 1, 1995, substituted "G.S. 131A-3(4)" for "G.S. 131A-(4)" in subdivision (1), and inserted "42 U.S.C. § 3001 et seq." in subdivision (3).

Session Laws 1995, c. 535, s. 35, effective October 1, 1995, substituted "G.S. 131A-3(4) or any adult care home" for "G.S. 131A-(4) or any domiciliary home" in subdivision (1).

§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

(1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;

(2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Human Resources pursuant to G.S. 143B-10;

(3) Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;

(4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;

(5) Provide training and technical assistance to regional ombudsmen;

(6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;

(7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;

(8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;

(9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and

(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution. (1989, c. 403, s. 1; 1995, c. 254, s. 3.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "providers" for "provider" in subdivision (1); inserted a comma following "internship" in subdivision (3); and substituted "except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq." for "without the written consent of the complainant or resident or upon court order" in subdivision (6).

§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor.

(b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.

(c) The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.

(d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.

(e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.

(f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes. (1989, c. 403, s. 1; 1993, c. 539, s. 1038; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 254, s. 4.)

Editor's Note. — Session Laws 1993, c. 539, s. 1038, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subsection (a) rewrote the third sentence and in the last sentence substituted "records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq." for "medical or personal financial records without a court order or without authorization in writing from the resident, or his legal representative".

§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. (1989, c. 403, s. 1; 1995, c. 254, s. 5.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, rewrote this section.

§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Editor's Note. — Session Laws 1993, c. 539, s. 1039, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 28. North Carolina Council on the Holocaust.

§ 143B-216.21. Membership; selection; quorum.

The Council shall consist of 24 members, six appointed by the Governor, six appointed by the President Pro Tempore of the Senate, six appointed by the Speaker of the House of Representatives, and six appointed by the other 18 members. Members shall be appointed in 1985 for two-year terms to begin July 1, 1985. In 1987 and biennially thereafter, successors shall be appointed for two-year terms. The six at-large appointments shall be made by the Council at its first meeting after July 1 of each odd-numbered year. To be eligible for appointment as an at-large member, a person must either be a survivor of the Holocaust or a first-generation lineal descendant of such person. A majority of the members shall constitute a quorum for the transaction of business. (1985, c. 757, s. 81(a); 1989, c. 47; 1995, c. 490, s. 23.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence. For the applicability of this amendment, see Editor's note.

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-218.1. Report to Joint Legislative Commission on Governmental Operations.

The Department of Revenue shall report annually to the Joint Legislative Commission on Governmental Operations on the quality of services provided to taxpayers, including telephone and walk-in assistance and taxpayer education. (1993, c. 532, s. 13.)

Editor's Note. — Session Laws 1993, c. 532, s. 13 was codified as this section at the direction of the Revisor of Statutes. It was inadvertently omitted from the 1993 Cumulative Supplement.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-260. Department of Correction — creation.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 20.1, provides: "In conjunction with the closing of small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located or any private for-profit or nonprofit firm about the possibility of converting that unit to other use. Consistent with existing law, the Department may provide for the lease of any of these units to counties, municipalities, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from medium security to minimum security, where that conversion would be cost-effective.

"The Department of Correction shall report quarterly to the Joint Legislative Corrections Oversight Committee on the conversion of these units to other use."

§ 143B-261. Department of Correction — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-264. Department of Correction — organization.

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5; 1993, c. 538, s. 42; 1994, Ex. Sess., c. 21, s. 6; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 21, which amended this section, in s. 6 provides: "This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after that date. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 21, s. 6, which amended this section, was effective on the same date that Chapter 538 of the 1993 Session Laws became effective (October 1, 1994), and is applicable to offenses occurring on or after that date.

§ 143B-267. Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

The Post-Release Supervision and Parole Commission shall consist of five full-time members. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1993. The terms of three members appointed effective July 1, 1993, shall be for three years. The terms of two members appointed effective July 1, 1993, shall be for four years. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting Commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work-release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work-release privileges except by majority vote of the full Commission.

The full-time members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2; 1983, c. 709, s. 3; c. 717, s. 80; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1993, c. 337, s. 1; c. 538, s. 43; 1994, Ex. Sess., c. 14, s. 63; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 63, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses occurring on or after that date.

Part 5. Substance Abuse Advisory Council.

§ 143B-270. Substance Abuse Advisory Council.

(a) There is created a Substance Abuse Advisory Council to consult with the Secretary of the Department of Correction in the administration of the Substance Abuse Program.

(b) The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the President Pro Tempore of the Senate, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually.

(c) Members appointed shall hold office for a term of four years beginning on October 1, 1987, except that three of the initial appointees and these three appointees' immediate successors shall serve a term of two years, with the immediate successors' terms expiring on September 30, 1991. The Speaker, Lieutenant Governor, and Governor shall each select one of their initial appointees to serve a two-year term.

(d) The Council shall meet at least once each quarter and at the call of the Secretary.

(e) Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided in G.S. 120-3.1. Council members who are not members of the General

Assembly shall receive travel and subsistence as provided in G.S. 138-5. (1987, c. 738, s. 111(d); 1991, c. 405, s. 2; 1995, c. 490, s. 55.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the second sentence of subsection (b). For the applicability of this amendment, see Editor's note.

ARTICLE 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273. Short title.

Editor's Note. —

Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.5. State-County Criminal Justice Partnership Account established.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.8. Duties of Department of Correction.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.13. Application for implementation funding.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.14. Fundable programs; community-based corrections programs.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.15. Funding formula.

To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

(1) Twenty percent (20%) of the total fiscal year appropriation plus any unspent or unclaimed funds in the Account shall be distributed in the discretion of the Secretary to encourage innovative efforts to develop multicounty projects; to encourage cooperation and collaboration among existing services and avoid duplication of efforts; to provide for technical assistance to the counties in the development of county plans and in the evaluation of programs funded under this Article; to encourage the renovation of existing facilities; and to encourage innovative substance abuse programs.

(2) Of the remaining eighty percent (80%) of the fiscal year appropriation, a total funding amount will be set for each county based upon the following variables:

  a. Twenty percent (20%) based on a fixed equal dollar amount for each county;

  b. Sixty percent (60%) based on the county share of the State population; and

  c. Twenty percent (20%) based on the supervised probation admissions rate for the county.

The sum of the amounts in sub-subdivisions a., b., and c. is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds. (1993, c. 534, s. 1; 1995, c. 324, s. 19.)

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 20.4 provides: "Notwithstanding the funding formula set forth in G.S. 143B-273.15, grants made through the North Carolina State-County Criminal Justice Partnership Act for the 1996-97 fiscal year shall be distributed to the counties as specified in G.S. 143B-273.15(2) only, and not as discretionary funds. Appropriations not claimed or expended by counties during the 1996-97 fiscal year shall be distributed pursuant to G.S. 143B-273.15(1)."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, redesignated subdivisions (a) and (b) as (1) and (2), and subdivisions (b)(1) through (b)(3) as (2)a. through (2)c.; in subdivision (1) substituted "fiscal year appropriation plus any unspent or unclaimed funds in the Account" for "fund", and added "to provide for technical assistance to the counties in the development of county plans and in the evaluation of programs funded under this Article"; in subdivision (2) substituted "fiscal year appropriation" for "fund" in the introductory language, and substituted "sub-subdivisions a., b., and c." for "subdivisions (1), (2), and (3)" in the sentence following subdivision (2)c.; and added the last two sentences of this section.

ARTICLE 7.

Department of Environment, Health, and Natural Resources.

Part 1. General Provisions.

§ 143B-279.1. Department of Environment, Health, and Natural Resources — creation.

CASE NOTES

Cited in Crowell Constructors, Inc. v. State, 342 N.C. 838, 467 S.E.2d 675 (1996).

§ 143B-279.3. Department of Environment, Health, and Natural Resources — structure.

(a) All functions, powers, duties, and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Environment, Health, and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

(1) Radiation Protection Section, Division of Facility Services, Department of Human Resources.
(2) Division of Health Services, Department of Human Resources.
(3) State Center for Health Statistics, Department of Human Resources.
(4) Coastal Management Division, Department of Natural Resources and Community Development.
(5) Environmental Management Division, Department of Natural Resources and Community Development.
(6) Forest Resources Division, Department of Natural Resources and Community Development.
(7) Land Resources Division, Department of Natural Resources and Community Development.
(8) Marine Fisheries Division, Department of Natural Resources and Community Development.
(9) Parks and Recreation Division, Department of Natural Resources and Community Development.
(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.
(11) Water Resources Division, Department of Natural Resources and Community Development.
(12) North Carolina Zoological Park, Department of Natural Resources and Community Development.
(13) Albemarle-Pamlico Study.
(14) Office of Marine Affairs, Department of Administration.

(b) All functions, powers, duties, and obligations heretofore vested in the following commissions, boards, councils, and committees of the following departments are hereby transferred to and vested in the Department of Environment, Health, and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

(1) Repealed by Session Laws 1993, c. 501, s. 27, effective July 23, 1993.
(2) Radiation Protection Commission, Department of Human Resources.
(3) Commission for Health Services, Department of Human Resources.
(4) Water Treatment Facility Operators Board of Certification, Department of Human Resources.
(5) Council on Sickle Cell Syndrome, Department of Human Resources.
(6) Perinatal Health Care Programs Advisory Council, Department of Human Resources.
(7) Governor's Council on Physical Fitness and Health, Department of Human Resources.
(8) Commission of Anatomy, Department of Human Resources.
(9) Coastal Resources Commission, Department of Natural Resources and Community Development.

(10) Environmental Management Commission, Department of Natural Resources and Community Development.
(11) Air Quality Council, Department of Natural Resources and Community Development.
(12) Wastewater Treatment Plant Operators Certification Commission, Department of Natural Resources and Community Development.
(13) Forestry Council, Department of Natural Resources and Community Development.
(14) North Carolina Mining Commission, Department of Natural Resources and Community Development.
(15) Advisory Committee on Land Records, Department of Natural Resources and Community Development.
(16) Marine Fisheries Commission, Department of Natural Resources and Community Development.
(17) Parks and Recreation Council, Department of Natural Resources and Community Development.
(18) Board of Trustees of the Recreation and Natural Heritage Trust Fund, Department of Natural Resources and Community Development.
(19) North Carolina Trails Committee, Department of Natural Resources and Community Development.
(20) Sedimentation Control Commission, Department of Natural Resources and Community Development.
(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.
(22) North Carolina Zoological Park Council, Department of Natural Resources and Community Development.
(23) North Carolina Aquariums Commission, Department of Administration.

(c)(1) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Division of Radiation Protection. All functions, powers, duties, and obligations of the Radiation Protection Section of the Division of Facility Services of the Department of Human Resources are transferred in their entirety to the Radiation Protection Division of the Department of Environment, Health, and Natural Resources.

(2) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Division of Waste Management. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Human Resources are transferred in their entirety to the Division of Waste Management of the Department of Environment, Health, and Natural Resources.

(d) The Department of Environment, Health, and Natural Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State. (1989, c. 727, s. 3; 1989 (Reg. Sess., 1990), c. 1004, s. 31; 1991, c. 342, ss. 16(a), (b); 1993, c. 321, ss. 28(a), (b); c. 501, s. 27; 1995 (Reg. Sess., 1996), c. 743, s. 20.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted "Solid" preceding "Waste Management" in the first and second sentences of subdivision (c)(2).

See editor's note under G.S. 143B-10 regarding references to the divisions of the Department of Environment, Health, and Natural Resources.

§ 143B-279.5. Biennial State of the Environment Report.

CASE NOTES

Cited in Crowell Constructors, Inc. v. State, 342 N.C. 838, 467 S.E.2d 675 (1996).

§ 143B-279.6. Consolidated county human services funding.

(a) The Secretary of the Department of Environment, Health, and Natural Resources shall adopt rules and policies to provide that:

(1) Any dedicated funding streams for local public health services may flow to a consolidated county human services agency and the consolidated human services board in the same manner as that for funding nonconsolidated county human services, unless a different manner of allocation is otherwise required by law.

(2) The fiscal accountability and reporting requirements pertaining to local health boards apply to a consolidated human services board.

(b) The Secretary of the Department of Environment, Health, and Natural Resources may adopt any other rule or policy required to facilitate the provision of local public health services by a consolidated county human services agency or a consolidated human services board.

(c) For the purposes of this section, "consolidated county human services agency" means a county human services agency created pursuant to G.S. 153A-77(b). "Consolidated human services board" means a county human services board established pursuant to G.S. 153A-77(b). (1995 (Reg. Sess., 1996), c. 690, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 690, s. 17, made this section effective July 1, 1996.

§ 143B-279.7. Fish kill response protocols; report.

(a) The Department of Environment, Health, and Natural Resources shall coordinate an intradepartmental effort to develop scientific protocols to respond to significant fish kill events utilizing staff from the Division of Environmental Management, Division of Marine Fisheries, Division of Epidemiology, Wildlife Resources Commission, the scientific community, and other agencies, as necessary. In developing these protocols, the Department shall address the unpredictable nature of fish kills caused by both natural and man-made factors. The protocols shall contain written procedures to respond to significant fish kill events including:

(1) Developing a plan of action to evaluate the impact of fish kills on public health and the environment.
(2) Responding to fish kills within 24 hours.
(3) Investigating and collecting data relating to fish kill events.
(4) Summarizing and distributing fish kill information to participating agencies, scientists and other interested parties.

(b) The Secretary of the Department shall take all necessary and appropriate steps to effectively carry out the purposes of this act including:

(1) Providing adequate training for fish kill investigators.
(2) Taking immediate action to protect public health and the environment.
(3) Cooperating with agencies, scientists, and other interested parties, to help determine the cause of the fish kill.

(c) The Department shall report annually to the Environmental Review Commission and the Senate Agriculture and Environment Committee no later than December 1 of each year. This report shall include a summary of all fish kill activity within the last year, an overview of any trend analyses, a discussion of any new or modified methodologies or reporting protocols, and any other relevant information. (1995 (Reg. Sess., 1996), c. 633, s. 4.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 633, s. 4, was codified as this section at the direction of the Revisor of Statutes.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

(a) There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:
    a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;
    b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established;
    c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
    d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3;
    e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3;

f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111;

g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112;

h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112;

i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3;

j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56;

k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13;

l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15;

m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19;

n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29;

o. To halt dam construction pursuant to G.S. 143-215.29;

p. To grant final approval of dam construction work pursuant to G.S. 143-215.30;

q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31;

r. To direct the inspection of dams pursuant to G.S. 143-215.32;

s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107; and

t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter 143; [and]

u. To administer the State's authority under 33 USC § 1341 of the federal Clean Water Act.

(2) The Environmental Management Commission shall adopt rules:

a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;

b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;

c. To implement water and air quality reporting pursuant to G.S. 143-215.68;

d. To be applied in capacity use areas pursuant to G.S. 143-215.14;

e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;

f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25, 1983;

  - g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
  - h. Governing underground tanks used for the storage of hazardous substances or oil pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes.
  - i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes.

(3) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall make rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(5) The Environmental Management Commission shall have the power to adopt rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:

  - a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and rules require; and
  - b. That the enforcement of the State laws and rules would require the applicant to also obtain a State permit in addition to the required federal permit; and
  - c. That the enforcement of the State laws and rules would be a duplication of effort on the part of the applicant; and
  - d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State.

(b) The Environmental Management Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, s. 3; 1985, c. 551, s. 1; 1989, c. 652, s. 2; c. 727, s. 218(128); 1989 (Reg. Sess., 1990), c. 1036, s. 1; 1991 (Reg. Sess., 1992), c. 990, s. 1; 1993, c. 348, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.4(b).)

Editor's Note. — The semicolon and bracketed "and" at the end of subdivision (a)(1)t. were inserted at the direction of the Revisor of Statutes.

Session Laws 1995 (Reg. Sess., 1996),

c. 572 provides in part that it should be a goal of the State to reduce the average annual load of nitrogen delivered to the Neuse River Estuary from point and nonpoint sources by a minimum of thirty percent of the average annual load for the period 1991 through 1995 by the year 2001. The Environmental Management Commission shall develop and adopt a plan to achieve this goal and shall publish the proposed plan in the North Carolina Register by 1 November 1996. The Environmental Management Commission shall annually report to the Environmental Review Commission as to its progress in developing and adopting the plan and shall make its initial report to the Environmental Review Commission on or before 1 November 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subdivision (a)(1)u.

Legal Periodicals. —

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

§ 143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.

(2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the Natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;

(2) The duration and gravity of the violation;

(3) The effect on ground or surface water quantity or quality or on air quality;

(4) The cost of rectifying the damage;

(5) The amount of money saved by noncompliance;

(6) Whether the violation was committed willfully or intentionally;

(7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and

(8) The cost to the State of the enforcement procedures.

(c) The chairman shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which he has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner;

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation;

(3) Whether the violation was inadvertent or a result of an accident;

(4) Whether the violator had been assessed civil penalties for any previous violations;

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations, and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) As used in this section, "Secretary" means the Secretary of Environment, Health, and Natural Resources. (1989 (Reg. Sess., 1990), c. 1036, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 5; 1995 (Reg. Sess., 1996), c. 743, s. 21.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 5, which amended this section, was effective October 1, 1994, and shall not affect pending litigation.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted the second sentence of subsection (f), which read "The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources."

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;
(2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have experience in health sciences;
(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;
(4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;
(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;
(6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;
(7) Three members interested in water and air pollution control, appointed from the public at large;
(8) One who shall, at the time of appointment, be actively connected with industrial production or have had experience in the field of industrial air and water pollution control;
(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;
(10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and
(11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences.

(b) Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications. The initial members of the Environmental Management Commission shall be those members of the present Board of Water and Air Resources who shall meet the above standards for membership on the Environmental Management Commission and who shall serve on the Environmental Management Commission for a period equal to the remainder of their current terms on the Board of Water and Air Resources, four of whose appointments expire June 30, 1975, five of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1979. Any initial appointment to replace a member of the present Board of Water and Air Resources who does not meet the above standards for membership on the Environmental Management Commission shall be for a period equal to the replaced member's unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Environment, Health, and Natural Resources.

(c) Nine of the members appointed by the Governor under this section shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Chapter. The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(d) In addition to the members designated by subsection (a), the General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of initial appointees by the General Assembly shall expire on June 30, 1983. Thereafter, these members shall serve two-year terms. (1973, c. 1262, s. 20; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, ss. 5, 6; 1981 (Reg. Sess., 1982), c. 1191, s. 19; 1989, c. 315; c. 727, s. 218(129); 1995, c. 490, s. 18.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subsection (d). For the applicability of this amendment, see Editor's note.

Part 5A. Marine Fisheries Commission.

§ 143B-289.19. Office of Marine Affairs — creation.

There is created in the Department of Administration the Office of Marine Affairs. (1985, c. 202, s. 3; 1995, c. 509, s. 98.)

Editor's Note. — This section is former G.S. 143B-390.1, as recodified by Session Laws 1995, c. 509, s. 98. The historical citation to the former section has been added to this section as recodified.

Part 9. Water Pollution Control System Operators Certification Commission.

§ 143B-301. Water Pollution Control System Operators Certification Commission — members; selection; removal; compensation; quorum; services.

(a) The Water Pollution Control System Operators Certification Commission shall consist of 11 members. Two members shall be from the animal agriculture industry and shall be appointed by the Commissioner of Agriculture. Nine members shall be appointed by the Secretary of Environment, Health, and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as water pollution control facility operators, water pollution control system superintendents or directors, water and sewer superintendents or directors, or equivalent positions with a North Carolina municipality;

(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;

(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;

(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment;

(6) One member who is employed by the Department of Environment, Health, and Natural Resources and works in the field of water pollution control, who shall serve as Chairman of the Commission;

(7) One member who is employed by a commercial water pollution control system operating firm; and

(8) One member shall be currently employed as a water pollution control system collection operator, superintendent, director, or equivalent position with a North Carolina municipality.

(b) Appointments to the Commission shall be for a term of three years. Terms shall be staggered so that three terms shall expire on 30 June of each year, except that members of the Commission shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7.

(c) The Commission shall elect a Vice-Chairman from among its members. The Vice-Chairman shall serve from the time of his election until 30 June of the following year, or until his successor is elected.

(d) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(e) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(f) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15.

(g) A majority of the Commission shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment, Health, and Natural Resources. (1973, c. 1262, s. 43; 1977, c. 771, s. 4; 1989, c. 372, s. 10; c. 727, s. 196, 197; 1989 (Reg. Sess., 1990), c. 850, s. 1; c. 1004, s. 19(b); 1991, c. 623, ss. 1, 16; 1995 (Reg. Sess., 1996), c. 626, s. 5.)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 22, provides: "In order to maintain staggered terms on the Water Pollution Control System Operator Certification Commission, of the two new members added to the Commission by Section 5 of this act, the initial term of one appointee shall expire on 30 June 1998 and the initial term of the other appointee shall expire on 30 June 1999."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "11 members. Two members shall be from the animal agriculture industry and shall be appointed by the Commissioner of Agriculture. Nine members shall be" for "nine members" in subsection (a).

Part 12. Forestry Council.

§ 143B-308. Forestry Council — creation; powers and duties.

There is hereby created the Forestry Council of the Department of Environment, Health, and Natural Resources. The Forestry Council shall have the following functions and duties:

(1) To advise the Secretary of Environment, Health, and Natural Resources with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:
   a. Profitable use of the State's forests consistent with the principles of sustained productivity.
   b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
   c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the Secretary of Environment, Health, and Natural Resources on any matter as the Secretary may direct. (1973, c. 1262, s. 52; 1977, c. 771, s. 4; 1989, c. 727, s. 218(139); 1995 (Reg. Sess., 1996), c. 653, s. 1.)

Editor's Note. — The subdivision (2) designation in this section was added at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subdivision (1), substituted "protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to" for "conservation and development of both state owned and privately owned forests in the State, including, the promotion of a more profitable use of forestlands", added subdivisions (1)a., (1)b., and (1)c.; rewrote subdivisions (2) and (3); and added subdivision (4).

§ 143B-309. Forestry Council — members; chairperson; selection; removal; compensation; quorum.

(a) The Forestry Advisory Council of the Department of Environment, Health, and Natural Resources shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.

(2) One person who represents the secondary wood-using industry.

(3) One person who represents the logging industry.

(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.

(5) Three persons who are members of statewide environmental or wildlife conservation organizations.

(6) One consulting forester.

(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.

(8) One person who represents a banking institution that manages forestland.

(9) One person with expertise in urban forestry.

(10) One person with active experience in city and regional planning.

(b) The Governor shall appoint one person from categories (1) and (5), two persons from category (4), and the persons from categories (6), (7), (8), (9), and (10). The President Pro Tempore of the Senate shall appoint the person from category (2) and one person each from categories (1), (4), and (5). The Speaker of the House of Representatives shall appoint the person from category (3) and one person each from categories (1), (4), and (5). The Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall consult with one another to insure that each of the three geographic regions of the State are represented in appointments made to fill categories (1) and (4).

(c) The Governor shall designate one member of the Council to serve as chairperson at the pleasure of the Governor.

(d) Members shall serve staggered terms of office of four years. The terms of office of members filling categories (1), (4), and (5) shall expire on 30 June of years that follow by one year those years that are evenly divisible by four. The terms of office of members filling categories (2), (3), (6), (7), (8), (9), and (10) shall expire on 30 June of years that follow by three years those years that are evenly divisible by four. Terms shall expire as provided by this subsection except that members of the Council shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term and shall be made by the appointing authority responsible for that category. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Governor shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the Governor. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the General Assembly.

(f) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(g) A majority of the Council shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the Secretary of Environment, Health, and Natural Resources. (1973, c. 1262, s. 53; 1977, c. 771, s. 4; 1989, c. 727, s. 218(140); 1995 (Reg. Sess., 1996), c. 653, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 653, s. 5, provides: "The Forestry Council as it is constituted at the time this act becomes effective shall be replaced by the Forestry Council as it is reconstituted by this act. Persons who are members of the Forestry Council at the time this act becomes effective are eligible for appointment to the reconstituted Forestry Council. To provide for staggered terms, initial appointments to categories (2), (3), (6), (7), (8), (9), and (10), as provided in G.S. 143B-309(a), as amended by Section 2 of this act shall expire on 30 June 1999. Initial appointments to categories (1), (4), and (5), as provided in G.S. 143B-309(a), as amended by Section 2 of this act, shall expire on 30 June 1997."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in the catchline, substituted "chairperson" for "chairman", and deleted "services" following "quorum"; added the subsection designation (a); rewrote subsection (a); added subsection (b); added the subsection designations (c), (d), (e), (f), (g), and (h); substituted "chairperson" for "chairman" in subsection (c); rewrote subsections (d) and (e); and added "including the support required to carry out studies it is requested to make" in subsection (h).

§ 143B-310. Forestry Council — meetings.

The Forestry Council shall meet annually in October and at least three other times a year and may hold special meetings at any time and place within the State at the call of the chairperson or upon the written request of at least a majority of the members. At least one meeting during each two-year period shall be held in the Mountains, Piedmont, and the Coastal Plain. (1973, c. 1262, s. 54; 1995 (Reg. Sess., 1996), c. 653, s. 3.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in the first sentence, substituted "annually in October and at least three other times a year" for "at least semiannually", and substituted "chairperson" for "chairman", and added the last sentence.

Part 13. Parks and Recreation Council.

§§ 143B-311 through 143B-313: Repealed by Session Laws 1995, c. 456, s. 4, effective July 1, 1996.

Part 13A. North Carolina Parks and Recreation Authority.

§ 143B-313.1. North Carolina Parks and Recreation Authority; creation; powers and duties.

The North Carolina Parks and Recreation Authority is created, to be administered by the Department of Environment, Health, and Natural Resources. The North Carolina Parks and Recreation Authority shall have at least the following powers and duties:

(1) To receive public and private donations, appropriations, grants, and revenues for deposit into the Parks and Recreation Trust Fund.

(2) To allocate funds for land acquisition from the Parks and Recreation Trust Fund.

(3) To allocate funds for repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund.

(4) To solicit financial and material support from public and private sources.

(5) To develop effective public and private support for the programs and operations of the parks and recreation areas.

(6) To consider and to advise the Secretary of Environment, Health, and Natural Resources on any matter the Secretary may refer to the North Carolina Parks and Recreation Authority. (1995, c. 456, s. 1.)

Editor's Note. — Session Laws 1995, c. 456, s. 6, made this Part effective July 1, 1996.

§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

(a) Membership. — The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.

(b) Terms. — Members shall serve two-year terms. Members shall serve no more than two two-year terms.

(c) Compensation. — The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(d) Quorum. — A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

(e) Staff. — All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources. (1995, c. 456, s. 1; 1996, 2nd Ex. Sess., c. 15, s. 16.1.)

Editor's Note. — Session Laws 1995, c. 456, s. 5, effective July 1, 1996, provides for the appointment and terms of the initial appointees of the North Carolina Parks and Recreation Authority, notwithstanding the provisions of subsection (b) of this section.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 3, 1996, in subsection (a), substituted "11 members" for "nine members" in the first sentence, and twice substituted "four members" for "three members" in the third sentence.

Part 22. North Carolina Zoological Park Council.

§ 143B-336.1. Special Zoo Fund.

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, and for the replacement of tram equipment as required to maintain adequate service to the public. The Special Zoo Fund may also be used to match private funds which are raised for these purposes. Funds may be expended for these purposes by the Department of Environment, Health, and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment, Health, and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section. (1989, c. 752, s. 154; 1995, c. 324, s. 26.11.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added "construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas" in the third sentence.

Part 28. North Carolina Aquariums Commission.

§ 143B-344.17. North Carolina Aquariums Commission — organization, powers, and duties.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 26.8A, provides: "Notwithstanding the provisions of G.S. 143B-344.17, the Department of Environment, Health, and Natural Resources may use funds in the North Carolina Special Aquariums Fund for one full-time position at each aquarium site to collect admission fees and to maintain records of visitors at the sites and, during high visitation periods, for seasonal temporary positions at each site for additional maintenance, housekeeping, and educational services and to collect admission fees."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Part 29. Advisory Commission for North Carolina State Museum of Natural Sciences.

§ 143B-344.18. Commission created; membership.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

CASE NOTES

Duty to Use Due Care. — The law does not impose a duty on the individual employees of the Department of Transportation that extends to the general public, beyond the duty to use due care in the performance of the specific tasks they undertake. The duty owing to the public to maintain highways falls upon the Department of Transportation (DOT). Reid v. Roberts, 112 N.C. App. 222, 435 S.E.2d 116, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

Part 2. Board of Transportation—Secondary Roads Council.

§ 143B-350. Board of Transportation — organization; powers and duties, etc.

(a) There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board may, from time to time, provide that one or more of its members or representatives shall hear any person or persons concerning transportation.

(b) The Board of Transportation shall have two ex officio members. The Secretary of Transportation shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation. The chairman of the North Carolina Rail Council shall be an ex officio member of the Board of Transportation.

(c) The Board of Transportation shall have 20 members appointed by the Governor. One member shall be appointed from each of the 14 transportation engineering divisions and six members shall be appointed from the State at large. One at-large member shall be a registered voter of a political party other than the political party of the Governor. At least one at-large member shall possess a broad knowledge of public transportation matters. No more than two members provided for in this subsection shall reside in the same engineering division while serving in office. The initial members shall serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1981, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by the Governor.

(d) The Board of Transportation shall have two members appointed by the General Assembly. One of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business.

Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) The Board of Transportation shall have duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation;

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department;

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes;

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it; ·

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department;

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available;

(8) To approve all highway construction programs;

(9) To approve all highway construction projects and construction plans for the construction of projects;

(10) To review all statewide maintenance functions;

(11) To award all highway construction contracts;

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain;

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The ability of a municipality to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(g) The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

(1) To approve all highway construction projects and construction plans for the construction of projects;

(2) To award all highway construction contracts;

(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(h) Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division. (1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185; 1987, c. 738, s. 170(b), (c); c. 747, s. 4.1; 1989, c. 500, s. 53; c. 692, s. 1.10; 1993, c. 483, s. 4; 1995, c. 490, s. 60.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the second sentence of subsection (d). For the applicability of this amendment, see Editor's note.

ARTICLE 9.

Department of Administration.

Part 1. General Provisions.

§ 143B-367. Duties of the Department.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 11.6 provides in part that the North Carolina Day Care Facility Task Force is created within the Department of Administration, which shall develop a day care facility upon the advice and recommendation of the Day Care Facility Task Force.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Part 2. State Goals and Policy Board.

§§ 143B-371, 143B-372: Repealed by Session Laws 1995, c. 117, s. 2, effective May 29, 1995.

Part 2A. North Carolina Progress Board.

§ 143B-372.1. North Carolina Progress Board.

(a) There is established within the Department of Administration the North Carolina Progress Board. The Board shall be located administratively in the Department of Administration but shall exercise all its prescribed statutory powers independently of the Department of Administration.

(b) The North Carolina Progress Board shall consist of 14 members as follows:

(1) The Governor, ex officio;
(2) Seven persons appointed by the Governor, none of whom shall be State employees or officers;
(3) Three persons appointed by the Speaker of the House of Representatives; and
(4) Three persons appointed by the President Pro Tempore of the Senate.

(c) The Governor shall be chair of the North Carolina Progress Board. The Governor shall appoint a vice-chair from among the membership of the North Carolina Progress Board to serve at the pleasure of the Governor. The North Carolina Progress Board may elect such other officers as it sees fit.

(d) The North Carolina Progress Board shall meet at least twice annually on the call of the chair or as additionally provided by the North Carolina Progress Board. A quorum is eight members of the Board. Members may not send designees to board meetings, nor may they vote by proxy.

(e) Initial appointments shall be for terms to begin July 1, 1995. Of the Governor's appointments, four shall be for two-year terms and three shall be for four-year terms. Of the appointments made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, one shall be for a two-year term and two shall be for a four-year term. As terms expire, successors shall be appointed for four-year terms.

(f) No member may be appointed to more than two consecutive terms. A member of the House of Representatives appointed by the Speaker of the House vacates membership on the North Carolina Progress Board when that person is no longer a member of the House of Representatives, except that if that person is in office at the expiration of the term of office in the House of Representatives but has not been elected to the next term, that person shall continue to serve until the convening of the regular session. A member of the Senate appointed by the President Pro Tempore of the Senate vacates membership on the North Carolina Progress Board when that person is no longer a member of the Senate, except that if that person is in office at the expiration of the term of office in the Senate but has not been elected to the next term, that person shall continue to serve until the convening of the regular session. (1995, c. 117, s. 1.)

Editor's Note. — Session Laws 1995, c. 117, s. 3 provides that no additional funds are appropriated to implement this act and that members may be appointed upon ratification of this act (May 29, 1995) for terms to commence July 1, 1995.

Session Laws 1995, c. 117, s. 4, made this part effective upon ratification. The Act was ratified May 29, 1995.

§ 143B-372.2. Responsibilities.

(a) The General Assembly notes that the Commission for a Competitive North Carolina developed goals in the following categories:

(1) Healthy Children and Families;
(2) Quality Education for All;

(3) A High Performance Workforce;
(4) A Prosperous Economy;
(5) A Sustainable Environment;
(6) Technology and Infrastructure Development;
(7) Safe and Vibrant Communities; and
(8) Active Citizenship/Accountable Government.

The Commission for a Competitive North Carolina adopted a report which established major goals and ways to measure progress toward these goals.

(b) The General Assembly finds that:

(1) The North Carolina economy of the future can provide unparalleled opportunity while maintaining North Carolina's traditional values, if the State pursues the future with clarity of purpose and perseverance;
(2) The North Carolina economy is in the midst of a massive transition created by technological changes, global competition, and new production practices; and
(3) In order to maintain employment opportunities, increase income levels, reduce poverty, and generate the public revenues necessary to provide public services, North Carolina must increasingly rely on an economy which adds value to its natural and human resources and provides a diverse mix of products.

(c) The North Carolina Progress Board shall:

(1) Encourage the discussion and understanding of critical global and national social and economic trends that will affect North Carolina in the coming decades;
(2) Examine the report of the Commission for a Competitive North Carolina;
(3) Track the eight issue areas set out in subsection (a) of this section;
(4) Hold public hearings and other methods of public participation to secure the views of citizens on priority goals for North Carolina;
(5) Formulate and submit to North Carolinians a report that describes and explains a vision for North Carolina's progress over the next 20 to 30 years;
(6) Submit to the 1997 Regular Session of the General Assembly prior to its convening, specific targets and milestones to accomplish its mission;
(7) Recommend how the targets and milestones can be applied to increase the accountability of government to the people of this State; and
(8) Report periodically to the people of North Carolina on progress toward meeting goals, targets, and milestones.

(d) The Regular Session of the General Assembly shall further define the mission of the North Carolina Progress Board in continuing its work.

(e) The General Assembly, after adopting the initial set of goals and measures as proposed or amended, may alter the goals and measures. (1995, c. 117, s. 1.)

§ 143B-372.3. Staff.

(a) The North Carolina Progress Board may hire an executive director, who may be dismissed by the North Carolina Progress

Board. The Executive Director shall report to the North Carolina Progress Board. The Executive Director shall hire support staff and may dismiss them.

(b) There may be an Executive Staff Committee to assist the North Carolina Progress Board which shall consist of the Executive Director, if hired, the State Budget Officer, the State Planning Officer, and the Director of Fiscal Research.

(c) The State Budget Office and the State Planning Office shall also provide staff support to the North Carolina Progress Board. (1995, c. 117, s. 1.)

Part 8A. Office of Marine Affairs.

§ 143B-390.1: Recodified as § 143B-289.19 by Session Laws 1995, c. 509, s. 98, effective July 29, 1995.

Part 9. North Carolina Human Relations Commission.

§ 143B-392. North Carolina Human Relations Commission — Members; selection; quorum; compensation.

(a) The Human Relations Commission of the Department of Administration shall consist of 21 members. The Governor shall appoint one member from each of the 12 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The President Pro Tempore of the Senate shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

(b) Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(c) A majority of the Commission shall constitute a quorum for the transaction of business.

(d) All clerical and support services required by the Commission shall be supplied by the Secretary of the Department of Administration. (1975, c. 879, s. 35; 1983, c. 461; 1989 (Reg. Sess., 1990), c. 979, s. 1(7); 1991 (Reg. Sess., 1992), c. 1038, s. 20; 1995, c. 490, s. 26.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in the fourth sentence of subsection (a). For the applicability of this amendment, see Editor's note.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

§ 143B-403.1. Governor's Advocacy Council for Persons with Disabilities — creation; powers and duties.

OPINIONS OF ATTORNEY GENERAL

Minor Free to Consult Advocate. — For complaints about the conditions of treatment in a 24-hour facility, the General Assembly specifically designated the Governor's Advocacy Council for Persons with Disabilities to perform such a function. There is no inclusion of the legally responsible person in this statute as is found in the statute dealing with minor patients and attorney consultations; thus the minor is free to consult an advocate. See opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, — N.C.A.G. — (December 20, 1995).

§ 143B-403.2. Governor's Advocacy Council for Persons with Disabilities — members; selection; quorum; compensation.

(a) The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of 21 members, appointed as follows:

(1) Seven members appointed by the Governor;
(2) Seven members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
(3) Seven members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(b) Of the members appointed to the Council, at least 12 shall be disabled persons or family members of disabled persons, with representation as follows:

(1) One representative of persons associated with substance abuse, one representative of persons with sensory impairment, one representative of persons with physical disabilities, one person who shall serve as Chair of the Protection and Advocacy for the Mentally Ill Advisory Committee of

the Governor's Advocacy Council for Persons with Disabilities, to be appointed by the Governor;

(2) One representative of persons with mental retardation, one representative of persons with developmental disabilities, one representative of persons with mental illness and one representative of persons with sensory impairment, to be appointed upon recommendation of the President of the Senate; and

(3) One representative of persons with mental retardation, one representative of persons with developmental disabilities, one representative of persons with mental illness, and one representative of persons with physical disabilities, to be appointed upon recommendation of the Speaker of the House of Representatives.

Appointments to the Council under the provisions of this subsection shall be made after consultation with and consideration of recommendations from statewide advocacy and membership organizations associated with persons covered by the federal Developmental Disabilities Assistance and Bill of Rights and the Protection and Advocacy for Mentally Ill Individuals Act.

(c) Members appointed to fit the representative categories shall be initially appointed as terms expire and as vacancies occur, until all categories are filled. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. An administrator in any branch of State government that delivers services to persons with disabilities is not eligible for membership on the Council.

(d) The initial term for three of the members appointed by the Governor shall be two years. The initial term for the remaining members appointed by the Governor shall be four years. At the end of the respective terms of office of the initial members of the Council, the appointment of all members shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be filled within 60 days after the date on which the vacancy occurs and shall be for the balance of the unexpired term. The initial members appointed by the General Assembly shall serve for terms to expire June 30, 1993. Subsequently, members appointed by the General Assembly shall serve two-year terms beginning July 1, 1993, and biennially thereafter.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate one member of the Council to serve as chair and one member to serve as vice-chair.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 822, s. 1; 1979, c. 575; 1981 (Reg. Sess., 1982), c. 1191, ss. 23, 23.1; 1989, c. 121, s. 1; 1991, c. 608, s. 1; 1995, c. 490, s. 38.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after

January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (a)(2). For the applicability of this amendment, see Editor's note.

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and 18 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1981, c. 47, s. 5; 1981 (Reg. Sess., 1982), c. 1191, ss. 74, 76; 1989, c. 727, s. 218(149); 1991, c. 467, s. 1; 1995, c. 490, s. 27.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the next to last sentence of subsection (a). For the applicability of this amendment, see Editor's note.

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties.

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
  a. Office of the Governor
  b. Department of Administration
  c. Department of Correction
  d. Department of Cultural Resources
  e. Department of Revenue
  f. Department of Transportation
  g. Department of Environment, Health, and Natural Resources
  h. Department of Commerce
  i. Department of Crime Control and Public Safety
  j. Department of Human Resources
  k. Office of the Lieutenant Governor
  l. Office of the Secretary of State
  m. Office of the State Auditor
  n. Office of the State Treasurer
  o. Department of Public Instruction
  p. Repealed by Session Laws 1985, c. 757, s. 162, effective July 1, 1985
  q. Department of Agriculture
  r. Department of Labor
  s. Department of Insurance
  t. Office of the Speaker of the House of Representatives
  u. Justices of the Supreme Court and Judges of the Court of Appeals
  v. Department of Community Colleges
  w. Office of State Personnel
  x. Office of the Senate President Pro Tempore;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1). (1977, c. 771, s. 4; c. 967; 1979, c. 783; 1983, c. 710; 1985, c. 757, s. 162; 1989, c. 727, s. 218(151), c. 751, s. 7(21); 1989 (Reg. Sess., 1990), c. 900, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 42; 1993, c. 522, s. 17.)

Editor's Note. — This section is set out to correct an omission and a misprint in the main pamphlet.

§ 143B-418. North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services.

The North Carolina Internship Council shall consist of 17 members, including the Secretary of Administration or his designee, one member to be designated by and to serve at the pleasure of the President Pro Tempore of the Senate, one member to be designated by and to serve at the pleasure of the Speaker of the House of Representatives and the following 14 members to be appointed by the Governor to a two-year term commencing on July 1 of odd-numbered years: two representatives of community colleges; four representatives of The University of North Carolina system; two representatives of private colleges or universities; three representatives of colleges or universities with an enrollment of less than 5,000 students; and three former interns.

At the end of the respective terms of office of the 14 members of the Council appointed by the Governor, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The Governor may remove any member appointed by the Governor.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Council shall meet at the call of the chairman or upon written request of at least five members.

The Governor shall designate a member of the Council as chairman to serve at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 967; 1987, c. 564, s. 9; 1995, c. 490, s. 28.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant

Governor" in the first paragraph. For the applicability of this amendment, see Editor's note.

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.9. North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

(1) A Chairman appointed by, and serving at the pleasure of, the Governor;
(2) Ten at-large members, appointed by the Governor from the general public;
(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
(4) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(5) The Secretary of Administration, ex officio;
(6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio;
(7) The Chairman of the State Board of Education, ex officio;
(8) The Chairman of the OPEN/net Committee, ex officio, so long as such person is not a State employee;
(9) The Chairman of the North Carolina Utilities Commission, ex officio;
(10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio;
(11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;
(12) The Superintendent of Public Instruction, ex officio;
(13) The President of the University of North Carolina, ex officio;
(14) The President of the Department of Community Colleges, ex officio; and
(15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6, appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30, 1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons; and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The initial members appointed to the Board by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years.

The terms of the rotating ex officio members shall be of one-year duration, and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of the Board.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies shall be filled in the same manner as the original appointment.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Board meets quarterly and at other times at the call of the chairman or upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business. (1979, c. 900, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 6-8; 1983 (Reg. Sess., 1984), c. 1116, s. 92; 1995, c. 490, s. 42.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (4). For the applicability of this amendment, see Editor's note.

Part 23. Information Technology [Resource Management] Commission.

§ 143B-426.21. Information Resource Management Commission.

(a) Creation; Membership. — The Information Resource Management Commission is created in the Office of the State Controller. The Commission consists of the following members:

(1) Four members of the Council of State, appointed by the Governor.
(2) The Secretary of Administration.
(3) The State Budget Officer.

(4) Two members of the Governor's cabinet, appointed by the Governor.

(5) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) The Chair of the Governor's Committee on Data Processing and Information Systems.

(8) The Chair of the State Information Processing Services Advisory Board.

(9) The Chair of the Criminal Justice Information Network Governing Board.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The two initial cabinet members appointed by the Governor and the two initial citizen members appointed by the General Assembly shall each serve a term beginning September 1, 1992, and expiring on June 30, 1995. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service of the Commission if they are no longer cabinet members.

The appointees by the Governor from the Council of State shall each serve a term beginning on September 1, 1992, and expiring on June 30, 1993. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The Secretary of Administration shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency.

(b) Powers and Duties. — The Commission has the following powers and duties:

(1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.

(2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.

(3) To review and approve biennially the information technology plans of the executive agencies, including their plans

for the procurement and use of personal computers and workstations.

(4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency information technology plans.

(5) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation.

(6) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.

(7) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.

(8) To develop and promote a policy and procedures for the fair and competitive procurement of information technology consistent with the rules of the Department of Administration and consistent with published industry standards for open systems that provide agencies with a vendor-neutral operating environment where different information technology hardware, software, and networks operate together easily and reliably.

(c) Meetings. — The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly. (1983, c. 267, s. 2; 1989, c. 239, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(a); c. 1030, s. 51.14; 1996, 2nd Ex. Sess., c. 18, s. 23.3(b).)

Cross References. — For provision regarding useful life guidelines, see G.S. 115C-529.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added subdivision (a)(9).

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of Administration. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for State employees. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;
(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
(3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
(4) The State Treasurer, ex officio; and
(5) The Secretary of Administration, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and State employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. Any assets of such investment vehicles or trusts shall remain solely the property and rights of the State subject only to the claims of the State's general creditors.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(*l*) All clerical and other services and personnel required by the Board shall be supplied by the Secretary of Administration, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The Secretary of Administration is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (b)(3). For the applicability of this amendment, see Editor's note.

Part 26. North Carolina Farmworker Council.

§ 143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

(a) There is established within the Department of Administration the North Carolina Farmworker Council.

(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

(1) Four shall be appointed by the Governor.
(2) Two shall be appointed by the Speaker of the House of Representatives.
(3) Two shall be appointed by the President Pro Tempore of the Senate.
(4) The Secretary of the Department of Human Resources or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.

(5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.

(6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.

(7) The Chairman of the Employment Security Commission or his designee shall serve ex officio.

(8) The Secretary of Environment, Health, and Natural Resources or his designee shall serve ex officio.

(c) Vacancies in membership of the Council shall be filled by the original appointing authority for the remainder of the unexpired term.

(d) The Governor shall appoint the chairman of the Council. At its first meeting the Council shall select a vice-chairman from its membership and a secretary. The chairman shall preside at all meetings and in his absence the vice-chairman shall act as chairman.

(e) A majority of the membership shall constitute a quorum.

(f) The initial meeting of the Council shall be called by the Governor. Subsequent meetings shall be held upon the call of the chairman or upon the written request of four members. The Council shall meet at least four times per year.

(g) Council members who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Council members and ex officio members who are employees of the State of North Carolina shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem, subsistence and travel expenses at the rate set forth in G.S. 138-5.

(h) The Department of Administration shall provide necessary clerical equipment and administrative services to the Council, provided the Council may hire and discharge its own staff if it so desires. (1983, c. 923, s. 205; 1987, c. 876, s. 29.1; 1991, c. 130, s. 1; 1995, c. 490, s. 19.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment substituted "President Pro Tempore of the Senate" for "Lieutenant Governor" in subdivision (b)(3). For the applicability of this amendment, see Editor's note.

Part 27. North Carolina Board of Science and Technology.

§ 143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

(a) The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 17 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four members from private industry in North Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

(b) Members appointed to the Board by the General Assembly shall serve for two-year terms beginning 1 July of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. The two members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. The other 13 members appointed to the Board by the Governor shall serve for four-year terms, and until their successors are appointed and qualified. Of those 13 members, six shall serve for terms that expire on 30 June of years that follow by one year those years that are evenly divisible by four, and seven shall serve for terms that expire on 30 June of years that follow by three years those years that are evenly divisible by four. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor shall serve as chairman of the Board. The vice chairman of the Board shall be designated by the Governor from among the members of the Board. The Science Advisor to the Governor shall serve as executive director of the Board. The Secretary of Administration or his designee shall serve as secretary to the Board.

(d) The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

(e) Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1.

(f) A majority of the Board constitutes a quorum for the transaction of business.

(g) The Secretary of Administration shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1; 1981 (Reg.

Sess., 1982), c. 1191, ss. 44-46; 1985, c. 757, s. 179(b), (c); 1989, c. 751, s. 8(17); 1991, c. 573, s. 1; 1995, c. 490, s. 46.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the next to last sentence of subsection (a). For the applicability of this amendment, see Editor's note.

Part 28. Office of the State Controller.

§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(5) Prescribe the manner in which disbursements of the State agencies shall be made, in accordance with G.S. 143-3.

(6) Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency, in accordance with G.S. 143-20.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.

(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report of the preceding fiscal year, in accordance with G.S. 143-20.1.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes.

(14) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the State Controller may in cooperation with affected State agency heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:

1. Central telephone systems and telephone networks;
2. Teleprocessing systems;
3. Teletype and facsimile services;
4. Satellite services;

5. Closed-circuit TV systems;
6. Two-way radio systems;
7. Microwave systems;
8. Related systems based on telecommunication technologies.

b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item "a." of this subdivision.

c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item "a." of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services training to users within State agencies in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

(15) Provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under subdivision (14) of this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(16) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

a. Nonprofit educational institutions;

b. The Microelectronics Center of North Carolina ("MCNC");

c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;

d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; or

e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the Office of State Controller, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of State Controller, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision (16)a. through subdivision (16)e. shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a).)

§ 143B-426.39A. Information Highway Grants Advisory Council.

(a) The Information Highway Grants Advisory Council is created within the Office of the State Controller. The Council shall consist of 18 members as follows:

(1) Five members to be appointed by the Governor.
(2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.
(3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.
(4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.
(5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.
(6) One representative from The University of North Carolina to be designated by the President of The University of North Carolina.
(7) One representative from the Office of the State Controller, to be designated by the State Controller.
(8) One representative from the North Carolina School of Science and Mathematics, to designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the members of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(b) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochairs. A majority of the members of the Council shall constitute a quorum. The Office of the State Controller shall provide staff and space to the Council.

(c) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and Office of the State Controller on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The State Controller shall notify the Information Highway Grants Advisory Council as to whom the intended grant recipients are 15 days prior to awarding the grants. (1993 (Reg. Sess., 1994), c. 769, s. 10.1(c)-(e); 1995, c. 509, s. 99.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1(c) to (e) have been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1(a) and (b) provide: "(a) The General Assembly encourages the concept of a switched broadband information highway run by private sector industry, where the State could be a customer, that would (i) enhance the delivery of education, health care, and other services to all of the people of North Carolina and (ii) promote economic development throughout all the counties of North Carolina.

"(b) Seven million dollars ($7,000,000) in nonrecurring funds are appropriated in this act to the Office of the State Controller for the North Carolina Information Highway. These funds shall be used to provide one-time grants not to exceed one hundred thousand dollars ($100,000) per site to qualified State or local governmental entities who establish Information Highway sites. To qualify for a grant, a State or local governmental entity must: (i) file an application with the Office of State Controller by November 1, 1994, (ii) present a plan for the use of the grant funds and for the use of the Information Highway site, and (iii) demonstrate its willingness and ability to pay all of the expenses associated with the use and operations of the site. The State Controller shall administer the grants program established by this section after consulting with and receiving the recommendations of the Information Highway Grants Advisory Council."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1(f) to (i) provide: "(f) The Information Highway Grants Advisory Council and the State Controller shall report to the 1995 General Assembly regarding the grants program for the North Carolina Information Highway. Upon request, the Information Highway Grants Advisory Council and State Controller shall report to the Joint Legislative Education Oversight Committee and to any other legislative oversight committees.

"(g) Those State and local entities that have expended monies prior to June 1, 1994, on Information Highway equipment shall receive preferential consideration in expenditures pursuant to this section.

"(h) It is the intent of the General Assembly that those programs receiving grants for the North Carolina Information Highway be reviewed after a three year period to determine the benefits of the programs. No one shall obligate the State to pay any nonrecurring or recurring costs related to the North Carolina Information Highway except to the extent that funds are appropriated by the General Assembly specifically for that purpose. No one shall obligate the State to pay any recurring costs related to the North Carolina Information Highway beyond the end of the fiscal period for which funds are appropriated for that purpose.

"In no event shall anyone obligate the State to pay recurring operating expenses related to the North Carolina Information Highway for any non-State entity.

"(i) Notwithstanding any other law, funds in the amount of four million one hundred thousand dollars ($4,100,000) appropriated to the Office of the State Controller in Chapter 561 of the 1993 Session Laws for the 1993-94 fiscal year for the State Telecommunications System shall revert to the General Fund."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, deleted "the" preceding "The" following "representative from" in subdivision (a)(6); substituted "members" for "member" in the second sentence of the next to last paragraph of subsection (a); and substituted "15" for "fifteen" in the last sentence of subsection (c).

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-429. Department of Commerce — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.21, as amended by Session Laws 1995, c. 507, s. 27.3, creates the Piedmont Sports and

Entertainment Study Commission, to study the need for and feasibility of creating regional sports and entertainment facilities to serve the Piedmont area of the State, and to submit a report to the 1995 General Assembly, Regular Session 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769 s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 143B-431. Department of Commerce — functions.

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:
  a. The State Board of Alcoholic Control,
  b. The North Carolina Utilities Commission,
  c. The Employment Security Commission,
  d. The North Carolina Industrial Commission,
  e. State Banking Commission and the Commissioner of Banks,
  f. Savings and Loan Association Division,
  g. The State Savings Institutions Commission,
  h. Credit Union Commission,
  i. The North Carolina Milk Commission,
  j. The North Carolina Mutual Burial Association Commission,
  k. The North Carolina Rural Electrification Authority,
  l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the

Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.

(b) The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations to achieve the purpose of aiding the development of small businesses and to achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.

(c) The Department of Commerce shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

(1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.

(2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

(3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees and grants under this subdivision the Department shall take into consideration project applications, geographic diversity and regional balance in the entire community development block grant program. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

a. The minimum size of the Section 108 Loan Guarantee is (i) seven hundred fifty thousand dollars ($750,000) for a project supported by an individual local government and (ii) two hundred fifty thousand dollars ($250,000) for a project supported as part of a loan pool; and the maximum size is five million dollars ($5,000,000) per project.

b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.

c. The project has ten percent (10%) equity from the corporation, partnership, or sponsoring party. "Equity" means cash, real estate, or other hard assets contributed to the project and loans that are subordinated in payment and collateral during the term of the Section 108 Loan Guarantee.

d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity, except for projects involving Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code. Collateral on the loan must be sufficient to cover outstanding debt obligations.

e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.

f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees. (1977, c. 198, s. 1; 1987, c. 214; 1989, c. 76, s. 25; c. 751, s. 2; 1991, c. 689, s. 153; 1991 (Reg. Sess., 1992), c. 959, s. 49; 1995, c. 310, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subsection (d) added subdivision (d)(3), and the last paragraph of the subsection following subdivision (d)(3).

The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, in subdivision (d)(3) inserted "in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments" and inserted the present third sentence; in subdivision (d)(3)a., inserted the subdivision designation (d)(3)a.(i), and inserted "for a project supported by an individual local government and (ii) two hundred fifty thousand dollars ($250,000) for a project supported as part of a loan pool"; in subdivision (d)(3)c. substituted "ten percent (10%)" for "twenty-five percent (25%)" and added the second sentence; and in subdivision (d)(3)d., inserted "except for projects involving Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code."

§ 143B-431.1. Toll-free number for information on housing assistance.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 26.7, provides:

"(a) Of the funds appropriated in this act to the Department of Commerce, the sum of three million dollars ($3,000,000) for the 1996-97 fiscal year shall be allocated to the Center for Community Self-Help to further a statewide program of lending for home ownership throughout North Carolina. These funds will be leveraged on a ten-to-one basis, generating at least ten dollars ($10.00) of nontraditional home loans for every one dollar ($1.00) of State funds. Payments of principal shall be available for further loans or loan guarantees.

"(b) The Center for Community Self-Help shall submit, within 180 days after the close of its fiscal year, audited financial statements to the State Auditor. All records pertaining to the use of State funds shall be made available to the State Auditor upon request. The Center for Community Self-Help shall make quarterly reports on the use of State funds to the State Auditor, in form and format prescribed by the State Auditor or his designee. The Center for Community Self-Help shall make a written report by May 1 of each year for the next three years to the General Assembly on the use of the funds allocated under this section.

"(c) The Center for Community Self-Help shall report to the Joint Legislative Commission on Governmental Operations, the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Department of Commerce on a quarterly basis for the next three years.

"(d) The Office of the State Auditor may conduct an annual end-of-year audit of the revolving fund for economic development lending created by this appropriation for each year of the life of the revolving fund.

"(e) If the Center for Community Self-Help dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State and shall refrain from disposing of the revolving fund assets without approval of the State Treasurer.

"(f) The Department of Commerce shall disburse this appropriation within 15 working days of the receipt of a request for the funds from the Center for Community Self-Help. The request shall include a commitment of the leveraged funds by the Center for Community Self-help or its affiliates."

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

(a) Creation and Duties. — There is created within the Department of Commerce an Economic Development Board. The Board shall have the following duties:

(1) To provide economic and community development planning for the State.

(2) To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor. The recommendations may cover the following issues as well as any other economic development policy issues:

- a. Use of tax abatements and other incentives to motivate economic development.
- b. Definition of which specific activities and programs should be considered economic development activities and programs for the purpose of receiving State appropriations.
- c. The role of institutions of higher education in economic development.

  - d. The use of State funds to leverage private nonprofit economic development initiatives.
  - e. The linkage of workforce preparedness activities and initiatives, and economic development planning.
- (3) To recommend annually to the Governor biennial and annual appropriations for economic development programs.
- (4) To develop and update annually a comprehensive strategic economic development plan, as provided in G.S. 143B-434.1.

The Board shall meet at least quarterly at the call of its chair or the Secretary. Each quarter the Secretary shall report to the Board on the program and progress of this State's economic development.

(b) Membership. — The Economic Development Board shall consist of 36 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board, provided that effective with the terms beginning July 1, 1997, one of those appointees shall be a representative of a nonprofit organization involved in economic development and two of those appointees shall be county economic development representatives. The Governor shall designate a chair and a vice-chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and [G.S.] 138-6, as the case may be. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(c) Advice and Staff. — The Secretaries of Administration, State, and Transportation, the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall advise the Board on economic development activities within the responsibility of their respective departments. Clerical and professional staff support to the Economic Development Board shall be provided by an Interagency Economic Development Group composed of representatives of the following State agencies:

(1) The Department of Administration.
(2) The Department of Agriculture.
(3) The Employment Security Commission.
(4) The Department of Labor.
(5) The Department of Transportation.

The Department of Commerce shall have the responsibility for coordinating the activities and efforts of the Interagency Economic Development Group. (1977, c. 198, s. 1; 1981, c. 47, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 18; 1983, c. 717, s. 83; 1989, c. 751, ss. 7(29), 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 85; c. 1038, s. 22; 1993, c. 321, s. 313(a); c. 561, s. 12; 1993 (Reg. Sess., 1994), c. 773, s. 15.1.)

§ 143B-437A. Industrial Development Fund.

(a) Creation and Purpose of Fund. — There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for manufacturing or processing, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of manufacturing or processing, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for manufacturing or processing operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific manufacturing or processing activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a rate of four thousand dollars ($4,000) per new job created up to a maximum of four hundred thousand dollars ($400,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(a1) Definitions. — The following definitions apply in this section:

(1) Economically distressed county. — A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(2) Major economic dislocation. — The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) Manufacturing and processing. — Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5, effective August 1, 1996.

(b1) Utility Account. — There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one areas, as defined in G.S. 105-129.3, in creating jobs in manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for industrial operations in manufacturing or processing, warehousing or distribution, or data processing. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. — The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (b1) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 26.5 (b) was codified as subsection (c1) of this section at the direction of the Revisor of Statutes.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriate for, and activities occurring during, the 1996-97 fiscal year."

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5, effective August 1, 1996. (1989, c. 751, s. 9(c); c. 754, s. 54; 1991 (Reg. Sess., 1992), c. 959, s. 60; 1993, c. 444, s. 1; 1996, 2nd Ex. Sess., c. 13, s. 3.5.)

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.1(b) amends Session Laws 1993, c. 561, s. 104.1(a), noted in the main pamphlet, to refer to the 1994-95 fiscal year instead of the 1993-94 fiscal year.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.1(c) provides: "Subsections (a1) and (a2) of Section 104.1 of Chapter 561 of the 1993 Session laws apply to this section [s. 28.1]."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 1, 1996, rewrote subsection (a); added subsections (a1) and (b1); deleted former subsection (b), regarding designation of the most economically distressed counties in the State; added the subcatchline "Reports" in subsection (c); and deleted former subsection (d), defining "major economic dislocation."

§ 143B-437D. Economic development block grants.

The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants for economic development that will ensure that no local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. 105-129.3 and, to the extent practicable, that priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. 105-129.3. (1996, 2nd Ex. Sess., c. 13, s. 3.6.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), made this section effective August 1, 1996.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 143B-437E. Regional Development.

The Department of Commerce shall review the Economic Development Board's annual report on economic development to evaluate the progress of development in each of the economic regions defined by the Board in its Comprehensive Strategic Economic Development Plan. In its recruitment and development work, the Department shall strive for balance and equality among the economic regions and shall use its best efforts to locate new industries in the less developed areas of the State. (1996, 2nd Ex. Sess., c. 13, s. 3.10.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1996, Second Extra Session, c. 13, s. 3.10, having been 143B-437D.

Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), made this section effective August 1, 1996.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Part 8. Energy Division.

§ 143B-450.1. Authority to collect data; administration and enforcement; confidentiality.

Editor's Note. — Session Laws 1993, c. 539, s. 1040, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10. North Carolina State Ports Authority.

§ 143B-452. Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North

Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

(1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;

(2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;

(3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of

one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G. S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242; 1975, c. 716, s. 2; 1977, c. 65, s. 1; c. 198, s. 9; 1981 (Reg. Sess., 1982), c. 1191, ss. 69-71; 1983, c. 717, s. 2.1; 1989, c. 273, s. 2; c. 751, s. 8(25); 1989 (Reg. Sess., 1990), c. 1072; 1991 (Reg. Sess., 1992), c. 959, s. 70; 1995, c. 490, s. 54.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added the last sentence in the subdivision (2), following the sixth paragraph. For the applicability of this amendment, see Editor's note.

§ 143B-456. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Authority is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Authority is hereby authorized, at one time or from time to time, to borrow money and in evidence thereof to issue bonds, notes and other obligations of the Authority as provided in this Part. Bonds, notes and other obligations may also be issued to (i) establish such reserves as the Authority may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and to provide for working capital.

The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues, income or assets of the Authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Authority at such price or prices and under such terms and conditions as may be determined by the Authority. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Authority. Such bonds or notes shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority.

(b) Prior to the sale and delivery of any bonds or notes by the Authority, the Governor shall approve the general purposes of and the general security provisions for any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission.

(c) In the discretion of the Authority any obligations issued under the provisions of this Part may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State and, in the case of an authorized special user project, a deed of trust of which the trustee may be an individual who is a resident of the State. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of obligations, revenues or other money under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. The pledge of any assets, income or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority shall be valid and binding from the time when the pledge is made and any such assets, income or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

(d) The resolution authorizing any obligations or the trust agreement securing the same may provide that any moneys held pursuant thereto may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Part and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-30 or any successor provision thereof.

(e) Obligations issued under the provisions of this Part are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

(f) The Authority is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Authority, for any corporate purpose of the Authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this Part which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Part and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations.

(g) Any obligations issued by the Authority under the provisions of this Part shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income.

(h) Obligations issued under the provisions of this Part shall not be deemed to constitute a debt, liability or obligation of the State or of any other public body in the State secured by a pledge of the faith and credit of the State or of any other public body in the State, respectively, but shall be payable solely from the revenues, income or assets of the Authority pledged thereto. Each obligation issued under this Part shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same or the interest thereon except from the revenues, income or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any other public body in the State is pledged to the payment of the principal of or the interest on such obligation. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9; 1979, c. 159, s. 4; 1981, c. 856, s. 1; 1981 (Reg. Sess., 1982), c. 1181, s. 1; 1985

(Reg. Sess., 1986), c. 955, ss. 104, 105; 1987, c. 275, s. 3; 1995, c. 46, s. 16.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, in the first sentence of subsection (g), deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following "Part" and added "income taxes on the gain from the transfer of the obligations, and franchise taxes" to the end, and added the last sentence.

§ 143B-461. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.

Editor's Note. — Session Laws 1993, c. 539, s. 1041, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 13. Mutual Burial Associations.

§ 143B-472.3. Requirements as to rules and bylaws.

Editor's Note. — Session Laws 1993, c. 539, s. 1042, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.6. Unlawful to operate without written authority of Commission.

Editor's Note. — Session Laws 1993, c. 539, s. 1043, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.10. Penalty for failure to operate in substantial compliance with bylaws.

Editor's Note. — Session Laws 1993, c. 539, s. 1044, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.11. Penalty for wrongfully inducing person to change membership.

Editor's Note. — Session Laws 1993, c. 539, s. 1045, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.12. Penalty for making false and fraudulent entries.

Editor's Note. — Session Laws 1993, c. 539, s. 1046, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.13. Accepting applications without collecting fee and first assessment.

Editor's Note. — Session Laws 1993, c. 539, s. 1047, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.15. Free services; failure to make proper assessments, etc., made a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 1048, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.19. Making false or fraudulent statement a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 1049, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-474. Department of Crime Control and Public Safety — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 22.1, provides that of the funds appropriated to the Department of Crime Control and Public Safety for the 1994-95 fiscal year, two hundred thirty thousand seven hundred ninety dollars ($230,790) shall be allocated to implement a pilot program to provide assistance to communities in the development of community policing programs in high crime areas. The Secretary shall report to the General Assembly on this program by March 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for the ativities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of one hundred dollars ($100.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee must be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee must be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason must pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee must be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before he pays the fee by the court in which he is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin his community service before the fee is paid by the official or agency representing the State in the agreement.

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary is authorized to designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection must be furnished to the individual at the time of assignment of community service work by the community service coordinator.

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works. (1983 (Reg. Sess., 1984), c. 1034, s. 102; 1985, c. 451; 1985 (Reg. Sess., 1986), c. 1012, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 118; 1989, c. 752, s. 109; 1995, c. 330, s. 2; c. 507, s. 20(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 38 provides for the Administrative Office of the Courts, in consultation with the North Carolina Conference of District Attorneys, to study the problem of underutilization of the deferred prosecution program established in this section and recommend methods for encouraging greater use of the program across the State, and to report to the 1995 General Assembly.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 330, s. 2, effective June 26, 1995, added subsection (d).

Session Laws 1995, c. 507, s. 20(a), effective July 28, 1995, added subsection (e).

Part 5A. North Carolina Center for Missing Persons.

§ 143B-499.6. Improper release of information; penalty.

Editor's Note. — Session Laws 1993, c. 539, s. 1050, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1996

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1996 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

1585

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 1, 1999

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1999 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

Michael F. Easley

Attorney General of North Carolina